

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 406/2007**

% **Decided on: 4th March, 2008**

COMMISSIONER OF INCOME TAX
(Central)-I, New Delhi Appellant

Through Ms. P.L.Bansal, Adv.

versus

ANSAL BUILDWELL LTD.
118, Prakashdeep, 7, Tolstoy Marg,
New Delhi Respondent

Through Mr. Satyen Sethi with
Mr. Johnson Bara, Advs.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may
be allowed to see the judgment?

2. To be referred to Reporter or not?

3. Whether the judgment should be reported
in the Digest?

MADAN B. LOKUR, J (Oral)

The Revenue is aggrieved by an order dated 25th August, 2006

passed by the Income Tax Appellate Tribunal, Delhi Bench 'D' in

I.T.[SS] Appeal No.362(Del)/2003 relevant for the block assessment period 1st April, 1989 to 10th February, 2000.

2. During a search of the office premises of the Assessee, a bill for an amount of Rs.14,69,250/- in respect of commission on sale of flats by M/s. Televista Electronics Limited was found. It appears that the books of accounts of the Assessee indicated payment of an amount of Rs.12,50,000/- towards commission.

3. According to the Assessing Officer, post search inquiries revealed that the bill was bogus and in fact no commission was paid to M/s. Televista Electronics Limited. On this basis, the Assessing Officer added an amount of Rs.12,50,000/- to the income of the Assessee as undisclosed income.

4. The view taken by the Assessing Officer was upheld by the Commissioner of Income Tax (Appeals). However, the Tribunal has deleted the addition in the second appeal filed by the Assessee before the Tribunal.

5. We find from a perusal of the order passed by the

Tribunal that the amount of commission paid by the Assessee to M/s. Televista Electronics Limited was shown in the books of accounts maintained by the Assessee in the regular course of its business prior to the search. This fact was not disputed before the Tribunal. It appears that the amount had also been shown by the Assessee in its regular returns.

6. It is not clear from the record what happened in the regular assessment of the Assessee but the fact that the amount is sought to be included in the block assessment goes to suggest that the contention of the Assessee was accepted in the regular assessment.

7. It is submitted by learned counsel for the Revenue that notwithstanding the fact that the income was disclosed in the account books of M/s. Televista Electronics Ltd. and in the return of the Assessee, the Tribunal was in error in interpreting the broad definition of “undisclosed income” as appearing in Section 158B(b) of the Act. This reads as under:

“158B. In this Chapter, unless the context otherwise requires,-

(a) xxx xxx xxx

(b) “undisclosed income” includes any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of account or other document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of this Act, or any expense, deduction or allowance claimed under this Act which is found to be false.”

8. Learned counsel for the Revenue has relied on the last few words namely “or any expense, deduction or allowance claimed under this Act which is found to be false.” She says that these words were added by an amendment with retrospective effect from 1st July, 1995 by virtue of the Finance Act, 2002.

9. On the other hand, learned counsel for the Assessee has placed reliance on another amendment brought by the same Finance Act with retrospective effect from 1st July, 1995 as appearing in Section 158BB(1) of the Act. The insertion made is underlined and

this reads as follows:-

“Computation of undisclosed income of the block period.

158BB (1) The undisclosed income of the block period shall be the aggregate of the total income of the previous years falling within the block period computed, in accordance with the provisions of this Act, on the basis of evidence found as a result of search or requisition of books of account or other documents and such other materials or information as are available with the Assessing Officer and relatable to such evidence, as reduced by the aggregate of the total income, or as the case may be, as increased by the aggregate of the losses of such previous years, determined, -

(a) to (f) xxx xxx xxx

10. On a reading of both these provisions of law, which are inserted in the Act by the same amending statute, that is, the Finance Act, 2002, it appears to us that undisclosed income should be that which is discovered as a result, inter-alia, of a document or transaction which has not been or would not have been disclosed for the purpose of the Act. This pre-condition does not arise in so far as the present case is concerned because admittedly the document

recovered during the search represented a disclosed transaction of sale of property that had taken place for which M/s. Televista Electronics Limited had been paid a commission. In so far as the falsity of the expense or deduction or allowance is concerned, that must be necessarily be relatable to the document or transaction. This is clear from Section 158BB(1) of the Act which specifically requires that the material or information must be relatable to such evidence. Therefore, both requirements are necessary, namely, material showing that the amount has not been or would not have been disclosed and that the expense, deduction or allowance should be false on the basis of the unearthed evidence.

11. In so far as the present case is concerned, the very first requirement namely of non-disclosure of the material does not arise because in fact the Assessee had disclosed the transaction in its account books and this is not disputed by the Revenue. Moreover, the sale appears to have been considered by the Assessing Officer during the course of regular assessment, although learned counsel

for the parties are not in a position to tell us the exact facts. In any case, since the first condition itself is not satisfied, the falsity of the claim being relatable to that evidence does not arise.

12. Apart from the fact that the transaction appears to have been considered in the regular assessment, we find that the Assessing Officer had considered the following facts (as noted in the order of the Tribunal):-

“1. The person said to have mediated the deal i.e. Shri. Vipin Luthra is son-in-law of Shr. Sushil Ansal, Chairman and Managing Director of APIL and ABL at the time of search;

2. Televista is a loss making company and the sole purpose here seems to reduce the liability of ABL through siphoning off taxable income by showing commission payable to Televista as such diversion would not make any impact on tax liability of Televista.

3. M/s. Televista Electronics Ltd. is engaged in manufacture of electronic product and does not deal in real estate;

4. It cannot be said that the addition was not based on any seized material. The addition has been made on the basis of seized pages 1-6 of Annexure A-2, Party HR-10 as well as post search investigation, which is

permissible under Section 158BB of the Income Tax Act;

5. The replies submitted by Shri Shankar Kaul, Upendra Kaul and Anil Bhan conclusively establish the fact that no intermediary was involved in the sale of flats at Shalimar Residency. This is further supported by the fact that a single bill has been raised against commission received on account of sale of flats to different persons. All the flats could not possibly have been sold on the same date. “

13. The Tribunal has opined that these were inadequate reasons for coming to the conclusion that the commission paid by the Assessee to M/s. Televista Electronics Limited was bogus. This is a finding of fact arrived at by the Tribunal based on the material on record. The facts considered by the Assessing Officer may raise a doubt with regard to the genuineness of the transaction, but that by itself is not enough. The facts must be relatable to the evidence available and not inferential.

14. Learned counsel for the Revenue asks us to reappraise the evidence. Unfortunately, we cannot do that since no perversity has been shown from the conclusions arrived at by the Tribunal.

15. We are of the opinion that no substantial question of law arises in the matter.

16. The appeal is accordingly dismissed.

MADAN B. LOKUR, J

V.B. GUPTA, J

4th MARCH, 2008
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