

* **HIGH COURT OF DELHI : NEW DELHI**

+ **ITA No.332 of 2007**

Judgment reserved on: January 25, 2008

% Judgment delivered on: February 19, 2008

Commissioner of Income Tax
Delhi-VII, New Delhi

...Appellant

Through Mrs. Prem Lata Bansal, Advocate

Versus

Shri Vivek Dougall
3, Racquet Road
Civil Lines
Delhi

...Respondent

Through Mr. Salil Aggarwal with
Mr. Prakash Kumar, Advocates

Coram:

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

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |

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

Yes

MADAN B. LOKUR, J.

The Revenue is aggrieved by an order dated 11th August, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench D, in IT (SS) A No.137/Del/2002 relevant for the block period ending on 8th July, 1999.

2. The Assessee is one of the promoters of M/s Atul Glass Industries Limited (AGIL) and Maharashtra Glass & Agro Limited (MGAL).

3. A French company called Sekruti Saint Gobain (SSB) which was also in the same business as AGIL and MGAL, that is, safety glazing of automobile windshields had the intention of becoming a major supplier in India. Accordingly, AGIL, MGAL and SSB decided to join forces to meet the anticipated demand for laminated windshields and a joint venture agreement was entered into between them on 24th February, 1994. As per the

joint venture agreement, SSB was to be allotted certain preferential shares in AGIL and MGAL.

4. As a result of the joint venture agreement and certain other developments that took place, the promoters, including the Assessee, relinquished their right to manage MGAL in favour of SSB and also agreed not to compete with MGAL's business other than their involvement with AGIL. This non-compete agreement was entered into on 26th December, 1997 and in consideration thereof, SSB agreed to pay to the promoters an aggregate amount of Rs.400 lakhs to be apportioned between the promoters as per their shareholding.

5. On 8th July, 1999, a search and seizure operation was carried out at the residence of one Gulati and during the search of the premises, an MoU between A.C. Gulati on behalf of the Indian promoters and SSB was recovered as well as a copy of the non-compete agreement dated 3rd October, 1997.

6. As a result of the above recovery of documents, the Assessee was required to file its return for the block period pursuant to a notice under Section 158BC of the Income Tax Act, 1961 (the Act). The Assessee filed a nil return on 13th November, 2000.

7. At this stage, it is important to note that much before the search, the Assessee had filed a regular return of income for the Assessment Year 1998-99 and had claimed the amount received by him as non-compete fee and had claimed it to be not chargeable to tax. However, after the search and seizure, the Assessing Officer sought to treat the non-compete fee as undisclosed income of the Assessee during the block assessment proceedings. The contention of the Assessee was that the amount of non-compete fee was not undisclosed income within the meaning of Section 158B(b) of the Act. This contention was rejected by the Assessing Officer who concluded that the non-compete fee was really a consideration paid for a change in the shareholding in MGAL. The Assessing Officer also held that the

non-compete fee was a revenue receipt and, therefore, chargeable to tax.

8. The appeal filed by the Assessee was accepted by the Commissioner of Income Tax (Appeals) [CIT(A)] who concluded that the Assessee had made a proper disclosure of the receipt of non-compete fee much prior to the search and, therefore, the amount in question could not be treated as undisclosed income. It was also held that the non-compete fee received by the Assessee was a capital receipt not chargeable to tax.

9. The view expressed by CIT (A) was upheld by the Tribunal on the question of not treating the amount as undisclosed income. The Tribunal declined to go into the question whether the amount received was a capital receipt or a revenue receipt.

10. The expression “undisclosed income” has been defined in Section 158B(b) of the Act. This reads as follows:

“Definitions.

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 documents or transactions, where such money, bullion, jewellery, valuable article, thing, 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.”

11. On the basis of the above definition, what is important to note is that the non-compete fee should represent wholly or partly income or property which has not been or would not have been disclosed by the Assessee. In the present case, there is no doubt about the fact that the Assessee had disclosed the income in his regular return well before the search was carried out in the premises of Gulati. By no stretch of imagination can it, therefore, be said that the amount received by the Assessee as non-compete

fee was undisclosed income. As held by the Bombay High Court in *Commissioner of Income Tax v. Vikram A. Doshi*, [2002] 256 ITR 129, the transaction having been disclosed in the return, it is the subject matter of a regular assessment and not a block assessment. A similar view was expressed by the Bombay High Court in *Commissioner of Income Tax v. Shamlal Balram Gurbani*, [2001] 249 ITR 501.

12. A reading of the above provisions also makes it clear that there should be non-disclosure of income on the part of the Assessee and that such non-disclosure should have been detected as a result of the search. Neither of these two ingredients are present in so far as this appeal is concerned.

13. In *N.R. Paper & Board Ltd. v. Deputy Commissioner of Income Tax*, [1998] 234 ITR 733, the issue of 'non-disclosure' was discussed and it was explained:

“The definition of “undisclosed income” in section 158B(b) 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 documents or transactions, where such asset, entry or other document or transaction representing wholly or partly income or property which *has not been or would not have been disclosed* for the purposes of the Act. It, therefore, follows that what the assessee had already disclosed or would have disclosed is not to be treated as undisclosed income.” (emphasis in original)

14. As regards the second ingredient, in *Commissioner of Income Tax v. Ravi Kant Jain*, [2001] 250 ITR 141, this Court held, and this view has been repeated on several occasions, that in a block assessment the adverse material ought to have been unearthed during the search and that the assessment for the block period can be made only on the basis of the evidence found as a result of the search.

15. Under the circumstances, we are of the view that the law being well settled and the facts of the case being quite clear inasmuch as the Assessee had disclosed the amount received by him towards non-compete fee in its regular returns, no substantial question of law arises for consideration. The appeal is

dismissed. We assess counsel's fee at Rs.10,000/- which amount will be deposited by the Revenue within a period of four weeks from today by a cheque drawn in favour of the Registrar General of this Court.

16. List for compliance on 24th March, 2008.

MADAN B. LOKUR, J

February 19, 2008
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V.B. GUPTA, J

Certified that the corrected copy of the judgment has been transmitted in the main Server.