IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 834/2006

C.I.T .....
Appellant
Through Mr. J.R. Goel, Adv.

versus

MR. S.K.JAIN .....
Respondent
Through None.

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

O R D E R
22.01.2008

The Revenue is aggrieved by an order dated 16th December, 2005 passed by the Income Tax Appellate Tribunal, Delhi Bench `F?, New Delhi (`the Tribunal?) in ITA No.3597/Del/2002 relevant for the Assessment Year 1993-1994 and ITA 3589/Del/2002 relevant for the Assessment Year 1993-1994.

The Assessee had filed his returns in which he claimed a deduction on interest paid to Andhra Bank. It transpires that the previous owner of the house property belonging to the Assessee had taken a mortgage against the property on 19th March, 1991. In terms of the agreement executed between the previous owner and Andhra Bank, the rent to be paid by

Andhra Bank for occupation of the house property was to be adjusted against the

interest on the loan taken by the previous owner.

The previous owner then sold the house property to the Assessee by a sale deed dated 21st October, 1992. The arrangement that the previous owner had with Andhra Bank continued, with the result that the Assessee received rent from Andhra Bank after adjustment of the interest on the loan taken by the previous owner.

The Assessing Officer looked into the facts of the case and after holding regular assessment proceedings, he allowed a deduction to the Assessee on the interest amount paid by him for as many as three assessment years.

For the Assessment Year 1996-1997, the Assessing Officer decided to make further inquiries with regard to the loan amount and after an explanation was given by the Assessee with all documentary evidence, it was held that the Assessee was entitled to deduction on the interest paid.

Much later, on 25th June, 1999, a proposal was initiated for reopening the assessment in respect of the Assessee by taking recourse to Sections 147/148 of the Income Tax Act, 1961 (`the Act?). The proposal was approved by the concerned Commissioner of Income Tax and notices were

then issued to the Assessee for reopening the assessment in respect of Assessment Years 1993-94, 1994-95, 1995-96 and 1996-97.

Reassessment proceedings were conducted and the deduction earlier given to the Assessee was deleted. The Assessing Officer also made some other additions to the income of the Assessee.

Feeling aggrieved, the Assessee preferred an appeal before the Commissioner of Income Tax (Appeals) [`CIT(A)], which was dismissed and a second appeal was then preferred before the Tribunal.

The Tribunal noted that the Assessing Officer had given a deduction to the Assessee on the interest for four years, that is, from 1993-1994 to 1996-1997 on the same facts and in addition thereto, in respect of the Assessment Year 1996-1997, the Assessing Officer had looked into various documents

including the Agreement dated 19th March, 1991 as well as sale deed dated 21st
October, 1992. It is only thereafter that the deduction was granted to the Assessee. In other words, according to the Tribunal, the Assessee had made a full disclosure of all material facts before the Assessing Officer in respect of all four assessment years. On this basis, it was held that the notice under Section 148 of the Act could not be issued beyond the period of four years from the end of the relevant assessment year.

We do not find any error in the reasoning adopted by the Tribunal inasmuch as it appears that the Assessee had disclosed all material facts to the Assessing Officer. It seems that the Assessing Officer did not apply his mind to the returns filed by the Assessee. If that is so, the Assessee can hardly be faulted. The Assessee had made a claim for deduction on interest on the basis of certain facts. If those facts were not clear or required some further elaboration, the Assessing Officer could verify the same and call for information from the Assessee. Merely because the Assessing Officer failed to do so but nevertheless discharged his duties in accordance with law, it cannot give an adequate reason to him to reopen the assessment proceedings on the ground that all material facts had not been disclosed by the Assessee.
We may note that in a connected appeal filed by the Revenue under Section 260A of the Act being ITA No. 1532/2006, in the order passed by the Tribunal it has been mentioned that the Tribunal had dismissed the Revenue?s appeal on merits in respect of the next Assessment Year 1997-1998 by an order passed in March, 2004 No appeal appears to have been filed against that order meaning thereby that the Revenue has accepted the contention of the Assessee. We do not see any reason why in respect of the

assessment years that we are concerned with, the Revenue should agitate the matter when it has finally accepted the issue on merits in favour of the Assessee for the Assessment Year 1997-98.
In the circumstances, we are of the view that the Assessing Officer was

not justified in issuing a notice under Section 148 of the Act beyond the period of four years, which he did in respect of the Assessment Year 1993-1994, the notice having been issued on or about 25th June, 1999.

On merits also, we find that the Tribunal did not err particularly since the Revenue has accepted the order of the Tribunal in respect of Assessment Year 1997-98.

No substantial question of law arises.

The appeal is dismissed.

MADAN B. LOKUR, J

V.B. GUPTA, J
JANUARY 22, 2008
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