IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 756 OF 2007

11.01.2008
Decided on 11th January, 2008
COMMISSIONER OF INCOME TAX ..... Appellant
Through Mrs. P.L. Bansal with Mr. Vishnu
Sharma, Advs.

versus

RAM NIWAS .....
Respondent
Through

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? Yes

2. To be referred to Reporter or not? Yes

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

MADAN B. LOKUR, J. (ORAL)

1. The Revenue is aggrieved by an order dated 25th August, 2006 passed by
the Income Tax Appellate Tribunal, Delhi Bench `D?, New Delhi (`the Tribunal) in
ITA No. 453/Del/2004 relevant for the Assessment Year 1998-1999.

2. A search of the premises of one Kamal Chand Jain was conducted by the Revenue and they found a large number of documents purported to be hundis. One such document, drawn on a letter-head of the Assessee, was found in the premises of Kamal Chand Jain and it was believed to be a hundi for a sum of Rs.7 lakhs. A photocopy of the said document along with its English translation has been placed on record.

3. On the basis of the hundi and the presumption drawn under Section 69D of the Income Tax Act, 1961 (`the Act?), the Assessing Officer assessed a sum of Rs.7 lakhs in the hands of the Assessee.

4. The Assessee preferred an appeal before the Commissioner of Income Tax (Appeals) [`CIT(A)?], who conducted a rather detailed examination relating to the law explaining what is a hundi. The CIT(A) relied upon a decision of the Andhra Pradesh High Court in Commissioner of Income Tax v. Dexan Pharmaceuticals (P) Ltd., (1995) 214 ITR 576 (AP). The Andhra Pradesh High Court in turn relied upon a decision of the Calcutta High Court in Harsuk Das v. Dhirendranath, AIR 1941 Cal 498. Reference was also made to a commentary on the Negotiable Instruments Act by Sri Khergamwalla, XV Edition, by Sri M.S. Parthasaradhi as well as to the 15th Edition of Bhashyam and Adiga on the Negotiable Instruments Act. Thereafter, the CIT(A) extracted the following principles for explaining

what a hundi is:-
?1. There are always three parties to such a transaction. They are the drawer, the drawee and the payee. The drawer cannot himself also be the drawee.
If the transaction is bilateral it is a very strong indication to show that it is not a hundi transaction.

2. A hundi is payable to satisfy a person or order but negotiable without endorsement by the payee.

3. The holder of a hundi is entitled to sue on its basis without any endorsement in his favour.

4. A hundi once accepted by the donee, could be negotiated without endorsement.

5. In the case of loss of a hundi, the owner can claim duplicate or triplicate from the drawer and present the same to the drawee for claiming payment.

6. A hundi is normally in the oriental language as per the mercantile custom.?

5. Reference in this regard may also be made to Commissioner of Income Tax v. Paranjothi Salt Co., (1995) 211 ITR 141 (Madras).
6. Needless to say, apart from the above requirements, the document should be executed on hundi paper and not on any other paper.
7. On the basis of the case law, the CIT(A) came to the conclusion that the document was not executed on a hundi paper but on the letter-head of the Assessee and that it did not have all the characteristics of a hundi as explained by the Andhra Pradesh High Court, the Calcutta High Court and the Madras High Court. In addition, it was a bilateral transaction. On this

basis, the CIT(A) allowed the appeal of the Assessee and set aside the addition.

8. The Revenue then preferred an appeal before the Tribunal, which did not find any error in the view taken by the CIT(A). The Tribunal also noted that the Assessee had denied his signatures on the alleged document and that there was no mention of any amount received in the books of accounts of the Assessee.

The Tribunal further concluded that the ingredients of the legal fiction created by Section 69D of the Act had not been met.

9. At this stage we quote Section 69D of the Act, which reads as under:-

?69D. Where any amount is borrowed on a hundi from, or any amount due thereon is repaid to, any person otherwise than through an account payee cheque drawn on a bank, the amount so borrowed or repaid shall be deemed to be the income of the person borrowing or repaying the amount aforesaid for the previous year in which the amount was borrowed or repaid, as the case may be:

Provided that, if in any case any amount borrowed on a hundi has been deemed under the provisions of this section to be the income of any person, such person shall not be liable to be assessed again in respect of such amount under the provisions of this section on repayment of such amount.

Explanation.- For the purposes of this section, the amount repaid shall include the amount of interest paid on the amount borrowed.?

10. The primary requirement for invoking the deeming provision of Section

69D of the Act is that the document must be a hundi and it is only thereafter that the deeming provision comes into play. The authorities below have found

that the document is not a hundi as explained by the Andhra Pradesh High Court, the Calcutta High Court and the Madras High Court, which decisions we have no reason to disagree with. Clearly, the document in question is not a hundi because it represents a bilateral transaction and it is also not on a hundi paper. In the absence of these vital ingredients, the document cannot be described as a hundi and therefore, the presumption under Section 69D of the Act would not be available to the Revenue.

11. Learned counsel for the Revenue has contended that the document was found from the premises of Kamal Chand Jain and therefore, it must be deemed to be a hundi. We cannot accept such a contention. From where a document is found cannot, by any stretch of imagination, explain the nature of the document.

12. No substantial question of law arises.

13. The appeal is dismissed.

MADAN B. LOKUR, J

V.B. GUPTA, J
JANUARY 11, 2008
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