IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 204/2007

COMMISSIONER OF INCOME TAX DEL ..... Appellant
Through Mrs. P.L. Bansal, Advocate

versus

ASHOK KUMAR KAKKAR HUF ..... Respondent
Through Mr. Salil Aggarwal with Mr. Prakash
Kumar, Advocates.
CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE DR. JUSTICE S. MURALIDHAR

O R D E R
29.10.2007

1. The Revenue is aggrieved by an order dt. 9th June, 2006 passed by the Income-tax Appellate Tribunal ('the Tribunal') in ITA No. 409/Del/2003 relevant for the asst. yr. 1998-99.
2. In its return for the assessment year in question, the assessee had declared a short-term capital gain of Rs. 14,10,871 on sale of agricultural land and which had been adjusted against a short-term capital loss of Rs. 13,25,261 on account of sale of shares. According to the assessee, it had dealt with those shares through a broker named M/s CMS Securities Ltd., a member of the National Stock Exchange ('NSE').
3. The AO made enquiries with the NSE and was informed by the latter that the said broker had not traded on the NSE between 7th and 13th Jan., 1998, and between 4th and 10th Feb., 1998. The assessee disclosed before the AO the PAN, Ward number and other details of the broker but it appears that the

AO did not take any steps to make enquiries or summon the broker on the basis of the information disclosed by the assessee. The AO did not accept the transaction on the ground that the assessee had not been able to produce the broker to verify either his identity or the genuineness of the transaction. Accordingly, the claim of the assessee was rejected.

4. The Assessee preferred an appeal before Commissioner of Income-tax (Appeals) [CIT(A)']. Before the CIT(A), the assessee produced documents to show the genuineness of the transaction. The CIT(A) permitted the assessee to adduce the said additional evidence and ultimately allowed the appeal. The Revenue's appeal to the Tribunal was dismissed.

5. According to learned counsel for the Revenue, the CIT(A) erred in permitting the additional evidence to be adduced by the assessee particularly since the assessee had chosen not to produce these documents before the AO. We are unable to agree. When the Revenue went in appeal before the Tribunal, the documents filed by the assessee before the CIT(A) were available with it. The Revenue could have through its resources, verified the details in those documents including confirming the whereabouts of the broker particularly since the broker had filed his returns.

6. Learned counsel for the assessee says that latest and correct address of the broker had been supplied to the AO but he did not go into this aspect of the matter. In any case, all the particulars of the broker were with the AO, he could have summoned the broker to verify the genuineness of the transaction. However, he did not do so.

7. The response elicited by the AO from the NSE to the effect that no transactions involving the broker on the floor had taken place can at best be an error by the broker for which the assessee cannot be

penalised. In fact, for this reason also, it was incumbent on the AO to trace out the broker to verify the
genuineness of the transaction, but he failed to do so.
8. We do not find any infirmity in the opinion expressed by the CIT(A) as well as the Tribunal that the
AO had erred in rejecting the claim of the assessee regarding short-term capital loss.
No substantial question of law arises for consideration.
Dismissed.

MADAN B. LOKUR, J

OCTOBER 29, 2007 S. MURALIDHAR, J
VK