

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

Reserved on: 4th September, 2012

% *Date of Decision: 17th September, 2012*

+ ITA 226/2010

THE COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Rashmi Chopra, Sr. Standing
Counsel

versus

JAI PAL AGGARWAL Respondent
Through: Sh. Sandeep Sapra and Sh. O.P.
Sapra, Advocates.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE R.V. EASWAR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

R.V. EASWAR, J.:

In this appeal filed by the revenue under Section 260A of the Income Tax Act, ('Act', for short) the following questions are sought to be raised as substantial questions of law: -

- (a) *Whether on the facts and in the circumstances of the case, the Ld. ITAT erred in law and on merits in deleting the addition of ₹2,00,000/- on account of purchase of property bearing premises No.2-70, Seelampur-III, Shahdara?*
- (b) *Whether as per the provisions of Section 132(4A) of the Income Tax Act, 1961 and on the basis of documents relating to the property at Seelampur, the assessee is deemed to be the owner and thus the value of the property is the undisclosed income/investment liable to be added to the income of the assessee?*

- (c) *Whether on the facts and in the circumstances of the case, the Ld. ITAT erred in law and on merits in deleting the addition of ₹27,50,000/- on account of FDRs by holding the same to be based on dumb documents?*
- (d) *Whether on the facts and in the circumstances of the case, the Ld. ITAT erred in law and on merits in deleting the addition of ₹7,62,392/- on account of investment made by the assessee in M/s Fair Deal Garments?*
- (e) *Whether on the facts and in the circumstances of the case, the Ld. ITAT erred in law and on merits in deleting the addition of ₹16,80,100/- on account of cash deposits made by the assessee?*
- (f) *Whether order passed by the Ld. ITAT is perverse in law and on merits?*

2. The assessee is an individual. A search under Section 132 of the Act was conducted at his residence on 20.3.1996 and his bank lockers were also searched on 19.4.1996. Cash, jewellery and documents were found during the search and were seized. An assessment under Section 158BC(c) was made on 29.4.1997. An appeal against that assessment was filed by the assessee before the Income Tax Appellate Tribunal ('Tribunal', for short), which was the first appellate authority at that time. The Tribunal set aside the assessment by order dated 23.11.2004 with directions to the Assessing Officer to reframe the assessment after giving due opportunity of being heard to the assessee; the assessee was also directed to extend co-operation for the expeditious finalization of the assessment. Thereafter, a fresh block assessment order was passed on 28.3.2006 as per the directions of the Tribunal in which certain additions were made. The assessee filed an appeal to the Tribunal in IT(SS)A.No.121/Del./06. The Tribunal allowed the appeal of the assessee partly, confirming some of the additions and deleting some of them. The revenue has preferred the present appeal against this

order of the Tribunal and the appeal is confined to the following four issues:-

- (1) Addition of ₹2 lakhs on account of benami purchase of property No. 2-70, Seelampur-III, Shahdara;
- (2) Addition of ₹27,50,000/- on account of investment in fixed deposits;
- (3) Addition of ₹62,392/- on account of investment in M/s Fair Deal Garments; and
- (4) Addition of ₹16,80,100/- on account of cash deposits made in bank accounts.

3. We have heard the rival submissions and we have examined the orders of the Assessing Officer and the Tribunal.

4. Questions (a) and (b) relate to the addition of ₹2 lakhs on account of benami purchase of property in Seelampur. In the course of the search of the premises, documents were seized, which according to the revenue showed purchase of the aforesaid property by the assessee from one Fakir Chand in September, 1987. These documents include the General Power of Attorney, Deed of Will, Agreement to Sell, all of which were signed by Fakirchand. Name of the purchaser of the property was not mentioned in the documents nor was the sale price written on them. On these facts, the Assessing Officer proposed to treat the property as having been purchased by the assessee, benami, by utilizing his unaccounted monies. The assessee submitted that he had nothing to do with the property and that one Om Prakash of Shahdara, Delhi-32, a property dealer, brought the papers relating to the property to the assessee a day or two before the search as the owner of the property wanted to sell it. He left the original papers with the assessee for verification of title etc. The owner of the property was in dire need of

money and therefore wanted to sell the property through the property dealer. According to the assessee the papers were left with him by the property dealer only for verification and therefore no adverse inference could be drawn. In support of the claim the assessee filed the property dealer from the property dealer's affidavit.

5. The Assessing Officer did not accept the assessee's explanation. He noted that the property documents were dated September, 1987 and therefore, it was not true that they were given to the assessee only a few days prior to the search. He issued summons to Fakir Chand in an attempt to probe the matter further but the summons came back unserved. Though the documents were seized, nobody came forward to claim them or sought release from the income tax authorities. From these facts the Assessing Officer drew the inference that the property was purchased by the assessee benami and that there was no explanation to the contrary. Since the investment in the property was not shown in the books of account, the Assessing Officer made an addition of ₹2 lakhs as the assessee's undisclosed income.

6. On appeal the Tribunal referred to the contents of the affidavit dated 13.7.1998 of Om Prakash and held as under: -

“15. On going through the documents found during the course of search, therefore, it cannot be said that it pertained to any transaction carried out by the assessee in relation to any property of Shri Fakir Chand. The denial of the assessee in relation to any such transaction, which is supported by his affidavit, clearly negates the inference drawn by the department. For corroborating the denial, the assessee has also filed the affidavit of the property dealer, namely, Shri Om Prakash. In view of the deposition made through affidavits and in view of the clear denial of the assessee and further in view of the clear denial of the assessee and further in view of

the fact that no evidence could be collected by the Assessing Officer to correlate the purchase of the property by the assessee, the Assessing Officer was not justified in holding that the assessee had made any investment in the purchase of any property from Shri Fakir Chand on these documents.

16. It is a settled law that in block assessment order, addition can be made only on the basis of the material found during the course of search. In the instant case, on the basis of the material found during the course of search, no addition can be justified.

17. In view of the above and on considering the entire material on record, we are unable to uphold the view taken by the Assessing Officer and, therefore, the addition is deleted. The ground is allowed.”

7. It is difficult to uphold the conclusion of the Tribunal. The Tribunal overlooked that though Om Prakash filed an affidavit before the Assessing Officer, Fakir Chand did not respond to the summons issued by the Assessing Officer. There is no plausible explanation from the assessee why the documents relating to the property were found in his residence if he had nothing to do with it. The affidavit on which reliance was placed by the Tribunal (which claims to support the version of the assessee) cannot be relied upon to rebut the inference reasonably drawn by the Assessing Officer from the recovery of the documents from the premises of the assessee. The documents include the General Power of Attorney and an Agreement to Sell which bore the signature of Fakir Chand. The fact that the name of the buyer was not mentioned in the documents is a fact which goes in favour of the revenue. In considering whether any property was acquired benami, possession of the documents relating to the property is a relevant and important piece of evidence. The payment of money can therefore be inferred and since the assessee's books of account did not disclose the investment, the Assessing Officer rightly drew the inference that it

represented the assessee's undisclosed investment. The Tribunal further overlooked that neither Fakir Chand nor Om Prakash, the property dealer, came forward to claim the documents which is quite unusual if the intention of handing over the documents was only to enable the assessee to consider the proposal for buying the property. The Tribunal also overlooked that the name of the owner of the property was not mentioned in the affidavit of the property dealer. In these circumstances, the finding of the Tribunal is contrary to the evidence on record which it failed to take proper notice of. **We therefore, answer questions (a) and (b) in favour of the revenue and against the assessee.**

8. As regards question (c), the brief facts are that in the course of the search, a document appears to have been seized in which the assessee had recorded the value of his assets, which included FDRs (fixed deposit receipts) for ₹27.50 lakhs. The Assessing Officer examined the assessee's bank account with Karnataka Bank and found that the following deposits were made in FDRs:

<u>Date</u>	<u>Amount</u>	<u>Source</u>
4.4.1994	₹3,06,453/-	Maturity of FDRs
June, 1996	₹10,47,559/-	”
July, 1996	₹1,28,796/-	”

When asked to explain, the assessee stated that the source of the fixed deposits was shown in the statement of affairs filed in the course of the assessment proceedings. The Assessing Officer refused to attach any credibility to the statement of affairs as it was filed after the search; apparently, he took the view that the statement of affairs had been drawn up

in such a way to explain away the investment in the assets. He further noted that the interest earned from the fixed deposits had not been disclosed in the regular returns of income filed by the assessee. He accordingly, added the amount of ₹27,50,000/- as the undisclosed income.

9. On appeal the Tribunal examined the seized document and found that the figures did not co-relate with any date or details nor was the document signed. It also referred to the details of the fixed deposit receipts given in page 10 of Annexure A4, which was the seized document, and noted that except for mentioning the figure of ₹27,50,000/-, no details for the said figure were given. However, in respect of the fixed deposits with Karnataka Bank, the seized paper showed that the source for the same was the maturity proceeds of earlier fixed deposits. The Tribunal ultimately cancelled the addition by observing as under:

“65. On going through page 463 of the paperbook, which is copy of page 10 of annexure A-4, it is found that on these documents, some figure has been noted. From the noting on this paper, the details of FDRs cannot be detected. The assessee has denied this to be in his handwriting. The entries do not correlate any date or the signatures. The Assessing Officer did not collect any other evidence from banks or post office to correlate investment of the assessee in any other FDRs except the FDRs of ₹12,25,000/-, the source of which has been duly disclosed by the assessee.

66. Keeping in view of the above facts and also after taking to account the nature of entry on the seized document which is to be treated as dumb document, the addition of ₹27,50,000/- cannot be justified in block assessment year. In this view of the matter, the addition is deleted and the ground is allowed.”

It may be noted that the Tribunal saw the seized paper as a “dumb document” which meant that nothing could be understood from it. The document, according to the Tribunal, merely noted a figure of ₹27,50,000/-

without any details whereas details of other fixed deposits made with Karnataka Bank were given including the interest figure. The Tribunal also felt difficulty in gathering the details of fixed deposits for ₹27,50,000/- from the seized paper; there was no date or signature therein. On these facts the Tribunal has drawn the conclusion that the addition is without any basis. We are unable to say that the inference is unreasonable or is of such nature that no person, properly instructed on facts and law, would have come to. The Tribunal has properly taken note of the evidence; it has not ignored any relevant piece of evidence. Its conclusion cannot therefore be said to be perverse. **We therefore, answer the question (c) in the negative, in favour of the assessee and against the revenue.**

10. As regards the question (d), the brief facts are that certain documents seized at the residence of Smt. Pushpa Gupta, sister of the assessee, who was residing in the same premises showed that the assessee had made an investment of ₹7,62,392/- in M/s Fair Deal Garments between the period 26.11.1993 and 10.2.1994. At page 10 of the seized documents which were compiled into an annexure, date-wise receipts of the amounts from the assessee were found recorded. When asked to explain, the assessee stated that Fair Deal Garments belonged to his son Raju Aggarwal, who was also assessed to tax, and therefore, it was his duty to explain the investments. The Assessing Officer noted that the assessee and his son were living as joint family, but no clarification from the assessee's son on this aspect was forthcoming. He also noted that the assessee's son started business only from 26.12.1994 which was more than ten months after the last date of investment in Fair Deal Garments, shown by the seized paper. The Assessing Officer accordingly, inferred that the investments made prior to 26.12.1994 were only those of the assessee which fact was also corroborated

by the seized paper. In addition, the assessee's sister and her son Sunil Gupta also confirmed that the seized document pertained to the business done by the assessee and that since Sunil Gupta, the son of Pushpa Gupta was working for some time with the assessee, those documents were lying with Sunil Gupta. Taking note of all these facts, the Assessing Officer added the investment of ₹7,62,392/- as the assessee's undisclosed income.

11. On appeal it was contended before the Tribunal that no opportunity was allowed to the assessee to cross-examine his sister and her son and that Fair Deal Garments was the sole proprietorship of his sister's son, who started the same on 26.12.1994 and therefore, the question of any investment being made by the assessee in that concern did not arise. The Tribunal accepted the assessee's contention that the statements recorded from Pushpa Gupta and Sunil Gupta, which were relied upon by the Assessing Officer were not put to the assessee who was not given any opportunity to cross-examine them. The Tribunal found this "surprising" and proceeded to delete the addition on that ground.

12. We are unable to subscribe to the view taken by the Tribunal on the evidence brought before it. The Tribunal has overlooked that the seized papers contained date-wise receipts of amounts from the assessee between 26.11.1993 and 10.2.1994. Sunil Gupta, the assessee's nephew had not started any business during this period. He started the business only on 26.12.1994. There was therefore no possibility or reason for him to make any investment in Fair Deal Garment before 26.12.1994. Sunil Gupta was for some time employed with Jai Pal Aggarwal and that was the reason why the documents were found in his possession. The assessee has not denied this. These crucial aspects have been overlooked by the Tribunal while deleting the addition. We are of the view that the conclusion of the Tribunal

is unreasonable and vitiated by perversity. **Accordingly we answer question (d) in the affirmative and against the assessee and in favour of the revenue.**

13. As regards question (e), the brief facts are that on scrutiny on the assessee's bank account No.7375 with Karnataka Bank, Connaught Place, New Delhi, Assessing Officer found the following cash deposits in the account:

<u>"Date</u>	<u>Amount (₹)</u>
07/06/94	574100/-
25/08/94	200000/-
06/08/94	166000/-
03/02/95	240000/-
01/05/95	100000/-
01/05/95	200000/-
26/05/95	<u>200000/-</u>
Total	<u>1680100/-</u> "

On the ground that there was no explanation from the assessee as to the source of these deposits the Assessing Officer treated the entire amount as assessee's undisclosed income.

14. The Tribunal deleted these amounts by observing as follows: -

"84. Ground No.2(xv) is directed against the addition of ₹16,80,100/- made on account of cash deposit made in account no.7315 with Karnataka Bank, CP, New Delhi. The Assessing Officer has noted the deposits at page 17 of the assessment order which came to ₹16,80,100/-. He has observed that since the assessee has not explained the source of deposits, the same

are treated as unexplained income of the assessee for the block period.

85. The assessee has challenged the addition before the Tribunal. The contention of the learned counsel for the assessee was that the source of the cash deposits was fully explained by the learned counsel for the assessee. In this regard, reference has been made to annexure 3.

86. On going through the annexure 3, we find that the assessee had explained various cash deposits. It is also to be mentioned that no document or material was found to correlate that the assessee has concealed income. On going through the written submissions of the assessee and on examining the relevant material on record, we are of the considered opinion that the addition as made by the Assessing Officer cannot be justified. The same is, therefore, deleted.”

We find that the Tribunal has not given any valid reason for deleting the addition. It has rested its decision on Annexure 3 in which the assessee had supposedly explained the cash deposits. This Annexure is not before us and we have therefore, no means of knowing what the explanation is. Moreover, before the Assessing Officer the assessee does not appear to have submitted any explanation. However in deference to the observation of the Tribunal that they have gone through the annexure 3 which supposedly contains the explanation of the assessee and in the interest of justice, we set aside the finding of the Tribunal and restore the matter to the file of the Assessing Officer, who shall consider the assessee's explanation given in Annexure 3 and pass fresh orders with regard to this issue, after giving reasonable opportunity of being heard to the assessee. **Question (e) is therefore, answered accordingly subject to our order of remit.**

15. Question No.(f), which is a general question touching upon all the four additions, that were deleted by the Tribunal is also answered against the assessee insofar as the addition relating to Seelampur property and the

addition relating to the investment in Fair Deal Garment are concerned. As regards the addition on account of fixed deposits of ₹27.50 lakhs, the question is answered in the negative. So far as the question which relates to the addition of the cash deposits in the bank account is concerned, the question is answered in the affirmative but subject to our remark that the issue will be considered afresh by the Assessing Officer.

The appeal of the revenue is disposed of accordingly with no order as to costs.

(R.V. EASWAR)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

SEPTEMBER 17, 2012
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