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IN THE HIGH COURT OF DELHI AT NEW DELHI

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DECIDED ON: 19.12.2017

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ITA 1164/2017, CM APPL.46236/2017

PRINCIPAL COMMISSIONER OF INCOME TAX-18 Appellant
Through: Mr. Zoheb Hossain, Sr. Standing Counsel.

versus

SHRI OM PRAKASH CHANDNA Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K. CHAWLA

S.RAVINDRA BHAT, J. (ORAL)

1. The question of law sought to be urged by the revenue in its appeal under Section 260A of the Income Tax Act, 1961 is with respect to the alleged error in setting aside the additions made by the Assessing Officer ("AO") in the course of a search assessment under Section 158BC of the Income Tax Act, 1961.
2. The appellate Commissioner who considered the findings, made essentially upon remand by the ITAT, set aside the addition of ₹22,25,885/- attributed to the assessee. The AO had held that the additions of the amount which was not hitherto disclosed by the assessee was warranted because he had contributed in the purchase of a Lajpat Nagar property (F-18, Lajpat Nagar-II, New Delhi) by his wife. Further additions were made by the AO.
3. Search operations were conducted upon the assessee on 22.02.1996 leading to block returns. The initial assessments under

Section 158BC were appealed against. Ultimately, the ITAT on 24.11.2003 remitted the matter after its initial decision was set aside by this Court under Section 260 on 21.09.2007. The ITAT after remand remitted certain issues for re-determination to the AO on 19.11.2007. The issues pertained to the following: -

1. Addition of ₹36,80,855/- on account of investment in property number F-18, Lajpat Nagar-II, New Delhi.
 2. Addition of ₹83,96,785/- by adopting six percent as net profit rate on the undisclosed turnover from these benami concerns estimated by the AO at ₹13,99,46,424/-.
 3. Addition of ₹70,49,757/- as alleged capital contribution in the benami business units.
 4. Income of Maruti Draw.
4. The AO after remand added a total amount of ₹1,00,95,347/-. The assessee appealed to the CIT (A) with respect to substantially two items i.e. investment in the property and initial capital in the benami units. The ITAT further remitted the matter with respect to the assessment *vis-a-vis* the property and the amounts added.
5. The CIT (A) restricted the additions to a minimal amount and held as follows: -

“6. I have carefully considered the facts of the case, based on the directions of the Hon’ble ITAT, remand report and rejoinders submitted by the appellant. On careful consideration, I find that on the first issue relating to investment in the property at F-18, Lajpat Nagar-I, New Delhi, the Hon’ble ITAT New Delhi vide their order dated 19.09.2008 had directed the AO to ascertain how much amount has been contributed by the assessee for the cost of construction of the house and then compute the undisclosed investment in the house in the hands of the assessee and

whatever the amount found and shown invested by the wife of the assessee that has to be taken in the hand of the wife of the assessee and not in the hand of the assessee as the wife of the assessee is assessed to tax regularly. It is a matter of fact, which I have verified that the Agreement to sell the same property was duly registered in the name of the wife of the appellant, Smt. Asha Chandana. There is no adverse observation in this regard by the AO as well. No new facts have been drawn by the AO to suggest whether the appellant had contributed any consideration for purchase of this property, though disclosed and undisclosed sources. In view of this, keeping in view the fact that the property was duly registered in the name of the wife of the appellant and there was no evidence that the appellant had contributed towards it, there was no cogent reason on the part of the; AO to have made additions in the hands of the appellant in respect of undisclosed investment in the property. The addition made, therefore, is baseless and liable to be deleted.

6.2 On the 2nd issue regarding undisclosed investment in the opening capital of the various Benami firms of the appellant the Hon'ble ITAT had categorically directed as under: -

“The AO, is, therefore, directed to ascertain the factual figure of undisclosed capital contribution on the basis of opening of various bank accounts relating to these three concerns.”

Since the Hon'ble ITAT had separately considered the undeclared sales, therefore, keeping in view the above specific and categorically clear direction, it is evident that the AO was directed to verify the figures relating to amounts introduced for opening various bank accounts of the three benami firms by the appellant. Under the circumstances, the Ld. AO was required to verify the figures from the bank statements in respect of the above 3 benami firms. In view of this, the additions made by the Ld. AO in respect of amounts over and above the amounts introduced by the appellant in the bank while opening up bank accounts are to be deleted. The Ld. Counsel has

furnished bank statements before the AO and before this authority. On careful consideration the amounts shown by the appellants in the table below are found correct: -

| <i>Bank A/c</i> | <i>Name of the Bank</i> | <i>Date of opening</i> | <i>Description</i> | <i>Initial Capital</i> |
|-----------------|---------------------------|------------------------|--------------------|------------------------|
| 1386 | State Bank of Patiala | 06.11.95 | By cash | 5,000/- |
| 15224 | Bank of Baroda | 06.05.95 | By cash | 5,000/- |
| 1111 | Delhi Nagrik Sehkari Bank | 03.05.95 | By cash | 1,000/- |
| 1913 | Andhra Bank | 23.04.93 | By cash | 1,000/- |

Therefore, the addition on this ground is restricted to that extant.

In view of this, appeal is allowed.”

6. The CIT (A) also disagreed with the AO and set aside the findings with respect to additions of ₹70,49,757/-. The ITAT was of the opinion that so far as the additions made on account of payments attributable to the assessee through his wife for an acquisition were concerned, the AO took note of the fact that she was separately assessed to the income tax and yet made the addition in the final decision. As far as the question of addition of ₹70,49,757/- is concerned, the ITAT endorsed the view of the CIT (A) who applied the rule of consistency - having regard to the orders made in the case of Satish Kumar Chandna, the assessee's brother and business partner/associates. The findings of the ITAT in this regard are as follows: -

“25. In fact, identical addition of Rs.45,00,000/- had been set aside in the case of brother of assessee Sh. Satish Kumar Chandna wherein too the Assessing Officer after consideration

the reply of the assessee dated 10.02.2010 (pages 321 to 323 of paper book) and direction of the Tribunal of (extracted above in para 4.2) held in order dated 07.05.2010 (pages 296 of paper book) as under: -

“9 Initial capital contribution in benami business units:

The observations of ITAT vide order dated 19.09.2008 on these issues are as under:

“In the present case as stated above, nothing has been found to suggest that the assessee has made any capital contribution towards the unrecorded sales. However, we are of the view that opening capital in these three concerns cannot be said that the same was put of profit or out of profit or out of sale proceeds. Therefore, to that extent the capital has to be treated as undisclosed. The assessing officer is, therefore, directed to ascertain the factual figure of undisclosed capital contribution on the basis of opening of various bank account relating to these three concerns. Accordingly, this ground of the assessee is allowed in part.”

9.2 The assessee vide letter dated 10.02.2000 submitted the opening balances of various bank accounts which are as under and filed copies of these bank accounts:

| <i>Bank A/c</i> | <i>Name of the Bank</i> | <i>Date of opening</i> | <i>Description</i> | <i>Initial Capital</i> |
|-----------------|----------------------------|------------------------|--------------------|------------------------|
| <i>106374</i> | <i>Allahabad Bank</i> | <i>01.09.1995</i> | <i>By Cash</i> | <i>5,000/-</i> |
| <i>11123</i> | <i>Union Bank of India</i> | <i>14.06.1995</i> | <i>By Cash</i> | <i>2,000/-</i> |
| <i>106293</i> | <i>Allahabad Bank</i> | <i>05.04.1995</i> | <i>By Cash</i> | <i>1,000/-</i> |
| <i>15723</i> | <i>Bank of Madurai</i> | <i>16.08.1994</i> | <i>By Cash</i> | <i>5,000/-</i> |
| <i>106314</i> | <i>Allahabad Bank</i> | <i>04.05.1995</i> | <i>By Cash</i> | <i>2,500/-</i> |

9.3 Therefore, by following the direction of the ITAT vide order dated 19.09.2008 the initial capital contribution of the assessee in the benami concerns taken at Rs.15,500/-.”

26. In light of the aforesaid binding directions of the Tribunal and, the order of assessment in the case of brother of the appellant, addition made of Rs.70,49,757/- directed to be deleted and is restricted to Rs.12,000/- (as directed by the Tribunal) which too I covered by other addition made of Rs.8,19,905/- and not disputed in this appeal.

27. With prejudice to the above, the assessee is admittedly a whole seller in grey cloths and that, substantial transaction of such turn over are recorded by him in his books, whereas other transactions carried by him in the names of three concerns, for the same business and conducted from the same stocks of supplies have not been recorded. It was never a case of the assessee that the assessee had made any investment for earning an aforesaid income and such investment came to be made out his undisclosed income. It is an admitted fact that, no evidence has been found as a result of search that the assessee had made any such investment, which has been estimated by the AO at Rs.70,49,757/-. It is an admitted fact that, assessee has been carrying on business of supply of grey cloth on wholesale basis. It is again an admitted fact that the part of the supplies made, were unrecorded. It is again an admitted fact, as in evident from the copy of an account that, the supplies were obtained by the assessee on the basis of credit and after the sale proceeds were received by the assessee the amounts payable, were paid by the assessee to the suppliers. In any case, there was substantial sufficient stocks in respect of the stocks dealt by the assessee and were duly recorded in the books of accounts. It was submitted that unless there is an evidence found or is estimate any such an alleged investment, which too is based on no basis. It was also submitted that the entire addition made was based on hypothetical and surmise full consideration based on no valid material and was merely conjectural.

28. Also there is no basis to allege that the assessee had made any investment purportedly as a capital contribution. It is a

matter of record that the assessee was supplying the Grey Cloth and was making payment only on the receipt of the sale proceeds and that too at time even much later which is evident from the copy of the bank accounts which shows as soon as the sales were effected, monies were withdrawn either in case or by making the payments by cheque to the suppliers. This is verifiable from the bank statement which is on record.

29. *It has been held by the Hon'ble Delhi High Court in its order in the case of CIT v. Pradip Goyal in ITA No.651/2007 dated 20.05.2008 that where no evidence of investment is found in respect of the undisclosed turnover and the assessee has been carrying on the business in an unaccounted manner, no addition of investment can be made. In this case also a search had been conducted where in similar manner, the assessee has in various bank account held in benami names deposited sale proceeds and admitted that such unaccounted turnover in respect of sales amounted to Rs.8 crore in the block period. He was finally assessed by applying a rate of 1.5% as against 2.5 adopted by the AO. The AO has made addition on account of undisclosed investment of Rs.10 Lacs, which was reduced by VIT (Appeals) to Rs.5 lacs and on the basis of theory of peak investment, the Tribunal deleted the addition. On appeal the Hon'ble High Court held that the Tribunal was correct in doing so as there was no evidence found to that the assessee has made any such investment and no addition can be made of any such amount. The Hon'ble Allahabad High Court in the case of CIT v. Ashok Rastogi reported in 100 CTR 204 wherein their Lordships in para 4 have held that no addition can be made unless the assessee is found to have made any investment. Reliance is also placed on the following judicial pronouncements:*

- i) IT(SS)No.6/D/86 Dated 31.07.2002 Nihalsons Jewellers Vs. Dy.CIT.*
- ii) IR (SS) No.87/Del/1997 dated 12.10.2000 M/s Kuwer Fibers (P) Ltd. Vs. Dy.CIT"*

7. This Court is of the opinion that the chequered history of the litigation shows unanimity of one aspect: that the assessee's wife was

separately assessed to income. She had declared the acquisition of the property. She was the registered owner. No attempt was made on the part of the revenue to add that income in her hands. Likewise in the case of the other additions, findings are concurrent and rendered after examination and analysis of the material evidence. Having regard to these factual conclusions, the Court is of the opinion that no question of law arises; the appeal is, therefore, dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**A.K. CHAWLA
(JUDGE)**

DECEMBER 19, 2017
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