

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

% Judgment delivered on : 29.08.2008

+ ITA No. 1085/2005

**COMMISSIONER OF INCOME
TAX, DELHI-VII Appellant**

-versus-

SHRI ASHOK DUA Respondent

Advocates who appeared in this case:

For the Appellant	:	Ms Prem Lata Bansal
For the Respondent	:	Mr R. K. Sharma with Mr Mukesh Gupta

CORAM :-

**HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE RAJIV SHAKDHER**

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

BADAR DURREZ AHMED, J (ORAL)

1. This appeal relates to the block assessment period 01.04.1987 to 16.01.1998. It is directed against the Income Tax Appellate Tribunal's (hereinafter referred to as the Tribunal) order

dated 28.03.2005. Essentially, two issues have been raised by the learned counsel for the appellant. One issue pertains to the addition made by the Assessing Officer on the basis of certain bank statements discovered during the post search inquiry. The addition made by the Assessing Officer was to the extent of Rs 3,10,000/- by way of undisclosed income based on the said bank statements. It is an admitted position that the said bank statements were discovered in the course of a search during the 'post search inquiry' conducted by the Assessing Officer.

2. The second issue sought to be raised by the learned counsel for the appellant is with regard to the additions made by the Assessing Officer to the extent of Rs 6,50,000/- on account of his finding that the gifts of the said amount received from non-resident individuals by the assessee and his minor son were bogus. The admitted position with regard to this issue is that the assessee had disclosed the said gifts in his returns of income for the years 1993-94 and 1994-95. It is also an admitted position that no assessment under Section 143 (3) of the Income Tax Act, 1961, had been done. However, the returns have been processed under Section 143 (1) (a)

of the Income Tax Act, 1961. It is also not in dispute that what was discovered or found in the course of a search, which was conducted on 17.01.1998 in the assessee's residential premises, were only the gift deeds and the affidavits relating to the said gifts by the donors.

3. Being aggrieved by the additions made by the Assessing Officer on account of said the bank statements and the said gifts, the assessee preferred an appeal before the Commissioner of Income-tax (Appeals). After a detailed discussion of the factual position as also the law applicable, the Commissioner of Income-tax (Appeals) deleted the additions made by the Assessing Officer and returned a specific finding that the bank statements on the basis of which the addition of Rs 3,10,000/- was made, were not recovered during the course of a search. Consequently, the Commissioner of Income-tax (Appeals) was of the view that the same cannot be looked into and, therefore, the addition of Rs 3,10,000/- was deleted. With regard to the gifts, the Commissioner of Income-tax (Appeals) took the view that all that was discovered in the course of search were the documents which supported the gifts, namely, the gift deeds and the affidavits of the donors. The Commissioner of Income-tax

(Appeals) noted that nothing incriminating was found in the course of search which would go to indicate that the gifts were bogus. He noted that the doubts and suspicions discussed in the assessment order by the Assessing Officer arose during the course of post search inquiry. He also noted that except for suspicion, there was no concrete evidence for the Assessing Officer to hold that the gifts were bogus. It was also noted that, in addition, the gifts already stood discussed in the regular returns of income filed earlier. Consequently, the Commissioner of Income-tax (Appeals) held that as the conclusion of the Assessing Officer was unsupported by any adverse material found or seized during the search, the gifts were outside the purview of the block assessment of undisclosed income as defined under Section 158 (B) (b) of the Income Tax Act, 1961. Accordingly, he deleted the addition of Rs 6,50,000/- attributable to the said gifts.

4. In the revenue's appeal before the Tribunal, the findings of the Commissioner of Income-tax (Appeals) were confirmed. Before the Tribunal, the revenue had contended that the Assessing Officer was entitled to make the assessment of the undisclosed

income not only on the basis of the evidence found as a result of search, but also on the basis of such other material or information as was available with the Assessing Officer. It was further noted that the departmental representative did not dispute the fact that the bank statements were not found and seized during the course of search proceedings. The revenue, however argued that the information contained in the bank statements were available with the Assessing Officer while completing the assessment of the undisclosed income. The Tribunal placed reliance on the decision of this Court in **CIT v. Ravi Kant Jain :250 ITR 141 (Delhi)** and other decisions to hold that the computing of undisclosed income pursuant to a search operation can only be done on the basis of evidence found as a result of search. It would be instructive to note that in **Ravi Kant Jain** (supra), this Court had observed as under :-

“..... The special procedure of Chapter XIV-B is intended to provide a mode of assessment of undisclosed income, which has been detected as a result of search. As the statutory provisions go to show, it is not intended to be a substitute for regular assessment. Its scope and ambit is limited in that sense to materials unearthed during search. It is in addition to the regular assessment already done or to be done. The assessment for the block period can only be done on the basis of evidence found as a

result of search or requisition of books of account or documents and such other materials or information as are available with the Assessing Officer. Evidence found as a result of search is clearly relatable to Sections 132 & 132A.”

5. It is therefore, clear that the assessment in the block period can only be done on the basis of the evidence found as a result of search. In this case, the bank statements were not found as a result of the search nor are they relatable to any evidence which was found during the course of search. In view of the said decision and the clear position of law, we feel that the finding returned by the Tribunal in the impugned judgment with regard to the bank statements cannot be interfered with.

6. As regards the gifts, the Tribunal felt that it was not necessary to go into the question as to whether the alleged gifts were genuine or represented the assessee's own money sought to be laundered by way of NRI gifts. The Tribunal noted that the fact of the matter was that no incriminating material was found during the course of search to indicate that the assessee's claim of gifts was not genuine. During the course of search, only affidavits and gift deeds were found. The Tribunal observed that the very documents on

which the assessee relied to base his claim on the said gifts were found during the course of search and that it was not the case of the Department that but for the search, the claim of the gifts would not have been raised by the assessee. The Tribunal concluded that it could not be said that the gifts had been unearthed as a result of a search under Section 132 of the Income Tax Act, 1961, only. The documents found during the course of search were the records available with the assessee which could be relied upon by the assessee before the Department in the event his claim of having received the NRI gifts was called in question. The Tribunal returned a finding that there was no nexus between the addition amounting to Rs 6,50,000/- made by the Assessing Officer on behalf of said gifts and search under Section 132 of the Income Tax Act, 1961.

7. At this juncture, it may be also relevant to notice another decision of this Court in the case **CIT v. Vishal Aggarwal : 283 ITR 326 (Delhi)** wherein this Court noted, with approval, the observations of the Rajasthan High Court in **CIT v. Elegant Homes P. Ltd:259 ITR 232 (Raj)** that in Chapter XIV-B of the Act, special provisions for assessment in search cases have been given and if

any amount of income has not been taxed and during the course of search, if some undisclosed income is found on the basis of the material seized, that should be treated as undisclosed income. As per the scheme of special assessment under Chapter XIV-B, the assessment has to be based on incriminating material found in the course of the search. In the present case, all that was found were the gift deeds and the affidavits and there was no incriminating material found in the course of search to suggest that the gifts were bogus. In *Vishal Aggarwal* (Supra) the Tribunal in a similar situation had returned the finding that there was nothing in the assessment order to show that any evidence was found during the search to suggest that the gifts were bogus. The gifts having been declared in the returns of income, fell outside the purview of Chapter XIV-B of the Income Tax Act, 1961. In such a similar situation, this Court in *Vishal Aggarwal* (Supra), did not interfere with the findings and conclusions returned by the Tribunal and was of the view that no substantial question of law arose for the consideration of this Court.

8. We also take a similar view and find that no interference

with the impugned order of the Tribunal is called for on this ground also.

9. The appeal is dismissed.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

August 29, 2008

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