

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

+ **ITA No.790 of 2006**

With

ITA No.553 of 2007

%

*Reserved on: April 04, 2011.
Pronounced On: May 11, 2011.*

1) ITA No.790 of 2006

Sh. Dinesh Kumar Goel

. . . Appellant

through :

Mr. C.S. Aggarwal, Sr.
Advocate with Mr. Prakash
Kumar, Advocate.

VERSUS

Commissioner of Income Tax

. . . Respondent

through:

Ms. Prem Lata Bansal, Sr.
Advocate with Mr. Deepak
Anand, Advocate.

2) ITA No.553 of 2007

Sh. Dinesh Kumar Goel

. . . Appellant

through :

Mr. C.S. Aggarwal, Sr.
Advocate with Mr. Prakash
Kumar, Advocate.

VERSUS

Commissioner of Income Tax

. . . Respondent

through:

Ms. Prem Lata Bansal, Sr.
Advocate with Mr. Deepak
Anand, Advocate.

CORAM :-

**HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE M.L. MEHTA**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. ITA No.790 of 2006 relates to the Assessment Year 1997-98, which was admitted on the following substantial questions of law:

- "1. Whether the Income Tax Appellate Tribunal was correct in law in sustaining the disallowance of ₹18,99,255/- under the head 'advertisement expenses'?
2. Whether the Income Tax Appellate Tribunal was correct in law in sustaining the disallowance of the claim of expenses of ₹11,68,905/- under the head 'printing and stationery' on the ground that same was to be considered in the block assessment proceedings and not under Chapter XIV of the Income Tax Act, 1961?"

Other appeal is in respect of Assessment Year 1998-99 which also involves the aforesaid two questions with difference in amounts only. It is for this reason, both the appeals were heard together.

2. For the sake of convenience, we may take note of the facts of ITA No.790 of 2006 giving rise to the questions formulated

above. Concededly, outcome of these questions in this appeal would lead to same results in the other appeal as well.

3. The assessee furnished return of total income on 29.10.1997 declaring an income of ₹3,42,621/- *inter alia* claiming a deduction of expenditure incurred on advertisement at ₹1,00,36,975.75/-. The return was prepared on the basis of accounts. A search operation under Section 132(1) of Income Tax Act (hereinafter referred to as 'the Act') was conducted on 18.08.1998 on the assessee. On 31.03.1999, the assessee revised the return of income, within the statutory period under Section 139(5) of the Act, wherein he returned a loss of ₹58,39,070/-. In the revised return of income, he *inter alia* enhanced the claims of expenditure incurred by:

- (a) ₹3,69,500/- on printing and stationery (based on two bills), as he found that, the expenditure incurred under the aforesaid head was debited in his books for the financial year 1997-98 instead of the Financial Year 1996-97 i.e. for the Assessment Year 1997-98, in which the said expenditure had been incurred. In fact, apart from these two bills further amounts incurred under the aforesaid head

of ₹7,99,405/- (supported by seven "credit bills") were found, related to the Assessment Year 1997-98 which too, had also been claimed as a deduction. Thus, an aggregate deduction of expenditure incurred under the head 'printing & stationery' of ₹11,68,905/- was made.

(b) Apart from the aforesaid sums, a claim of expenditure of ₹40,78,858/- incurred was also made. The expenses incurred were supported by credit bills but remained to be ledgerized. Out of the sum of ₹40,78,858/- a sum of ₹21,79,603/- related to Assessment Year 1998-99 and remaining sum of ₹18,99,255/- related to the Assessment Year 1997-98.

4. On 29.03.2000, the assessment was framed under Section 143(3) of the Act at an income of ₹85,17,334/-. The Assessing Officer (AO) though proceeded to compute income on the basis of revised return, but disallowed the claim of the aforesaid expenditure incurred by holding that the claim of deduction of ₹3,69,500/- incurred on 'printing & stationery' was incorrect and "against the provisions of the Act". ₹7,99,405/- in respect

of printing and stationery bills pertaining to financial year were not recorded and were found during search proceedings. On this premise, he held the view that it had to be dealt with in the block assessment. In respect of advertisement expenditure of ₹40,78,858/-, the AO held that out of the advertisement bills, ₹18,99,255/- were not ledgerized in respect of which entry was made as per seized ledger in financial year 1997-98, which narrated "provision for bill". According to him, this had to be dealt with block assessment. In respect of remaining sum of ₹21,79,603/-, he held that these bills were raised in financial year 1997-98 and had been entered in the books of accounts for 1997-98 and thus would be considered in financial year 1997-98. He, thus, disallowed the claim of expenditure.

5. Being aggrieved by the order of the AO, the assessee preferred appeal before the CIT (A). It was contended that since genuineness of expenditure incurred had not been disputed, the AO had erred in law in holding that the said expenditure incurred in the Financial Year 1996-97 of ₹3,96,500/- and ₹7,99,405/- aggregating to ₹11,95,905/- and of ₹18,99,255/- under the two heads had to be allowed, as the assessee was following mercantile method of accounting and could not be

disallowed. It was submitted that there was no justification to say that it had to be dealt with in block assessment and that in any case, it has not been allowed thereto. The CIT (A) obtained a remand report of the AO on 16.01.2001, who confirmed that the amounts credited in the account of advertisers are genuine and were incurred for the services rendered. In other words, there was no dispute about the incurring of expenditure. The assessee furnished his comments on 31.01.2001 with submissions that the deductions claimed as aforesaid be directed to be allowed. The CIT (A), however, held that the expenditure incurred was since not ledgerized and thus could be a part of block assessment proceedings.

6. Still dissatisfied, the assessee went in appeal before the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal'). However, here also, the assessee remained unsuccessful as disallowance sustained by the CIT (A) has been upheld by the Tribunal on the same ground, viz., the expenditure was not ledgerized even though it pertained to the assessment year in question and therefore, deduction could not be considered in regular assessment.

7. It is clear from the above that there is no dispute that the expenditure was incurred, and genuineness thereof is not disputed. At the same time, legal question that arises is as to whether the expenditure incurred under these two heads could be disallowed for the reasons stated in the orders passed by the Authorities below.

Question No.1

8. As noted above, the assessee had claimed a sum of ₹40,78,858/- on account of expenditure on advertisement and marketing expenses claimed in the revised return for the Assessment Year 1997-98. The assessee had submitted that these expenses had been accounted for in the Assessment Year 1997-98 as per ledger. However, he was claiming the same in this assessment year in the revised return on the ground that he was following mercantile system of accounting. The AO has found that the assessee had not recorded advertisement bills totaling ₹18,99,255/- in the books of account for Financial Year 1996-97. As per seized ledger for Financial Year 1997-98, one entry of this amount had been recorded on 01.04.1997 with narration "provision of bill". He, thus, observed that this consolidated entry passed on 01.04.1997 represented

advertisement bill, was only an after-search-thought and was an attempt to convert undisclosed income assessable under the block assessment proceeding into allowable deduction. He even asked the assessee to clarify the reason for not recording the aforesaid advertisement bills amounting to ₹18,99,255/- during Financial Year 1996-97 when these bills had been raised on dates falling during financial year 1996-97, but reply was not furnished by the assessee. Accordingly, the AO opined that this expenditure had to be dealt with during block assessment, which was pending in the case of the assessee. He disallowed the claim of deduction of ₹18,99,255/-. This reasoning of the AO had been accepted by the CIT (A) as well the Tribunal.

9. We fail to understand logic given by the Authorities below in disallowing the expenditure. Such an expenditure cannot be considered in block assessment, as provisions of Section 158B of the Act would not apply. Section 158B of the Act deals with special procedure for assessment of search cases, i.e., assessment of "undisclosed income" as a result of search. Clause (b) of Section 158B of the Act defines "undisclosed income" as under:

- b) "Undisclosed income" includes any money, bullion, jewellery or other valuable article or thing or any income

based on any entry in the books of account or other documents or transactions, where such money, bullion, jewellery, valuable article, thing, entry in the books of account or other document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of this Act.”

10. Thus, when during the search, it is found that there is wholly or partly undisclosed income or property, assessment can be carried out for the entire block period. It, thus, applies to income which is undisclosed and is found during search which may be in the form of money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of account, etc. It does not apply to “expenditure” claimed which was incurred in the particular financial year. Even the assessee is claiming deduction of the said expenditure as business expenditure under Section 37 of the Act and this has to be dealt with in the regular assessment and not in the block assessment.

11. In the present case, the assessee had revised the return within stipulated period prescribed under the Act. He was, thus, entitled to do so. His plea was that the expenditure was incurred during the year in question and even if the bills were not received and they were not ledgerized, he had right to

claim the same as deduction, as he was following mercantile system of accounting. In these circumstances, the AO was required to go into the issue. He, however, did not apply his mind at all on this aspect and merely on the ground that the expenditure was not ledgerized, they proceeded on wrong premise that it could be taken care of in the block assessment year.

12. The orders of the Authorities below are, therefore, set aside. At the same time, we may point out that the assessee has claimed that the expenditure is actually incurred and payments are made by account payee cheques. This aspect has not been looked into by the AO at all. Therefore, it would be necessary to verify as to whether the expenditure was incurred and for this limited purpose, we remit the case back to the Assessing Officer. If it is found that the expenditure was incurred, it would be allowable as expenditure in the year in question. The question of law is answered in the aforesaid manner.

Question No.2

13. In the revised return filed by the assessee, he claimed the deduction of printing and stationery bills wrongly included in

Financial Year 1997-98 instead of 1996-97 amounting to ₹3,69,500/-. When the assessee was asked to give details of these printing and stationery bills, his reply was that two bills, both dated 27.05.1996 of ₹1,89,000/- and ₹1,80,500/- were previously not entered in the books of accounts. The AO, however, disallowed the claim when he noticed that these were neither ledgerized in Financial Year 1996-97 nor in Financial Year 1997-98.

Another claim of ₹7,99,405/- was also disallowed on the ground that the same was not recorded in the books of accounts of the assessee and same was found during search proceeding. Only when the Department seized during the course of search, the assessee made the claim by filing the revised return. Again, it was observed by the AO that since the amount is not ledgerized, it can be taken care of in the block assessment proceeding under Section 158BC i.e. Chapter XIV-B of the Act.

14. Again, this is an expenditure item and for the reasons given while answering the Question No.1, provision of Chapter XIV-B would not be applicable and it was incumbent upon the AO to consider the allowability or otherwise this expenditure in the

regular assessment. However, it would be open to the AO to go into the veracity/genuineness of the expenditure. Thus, for the same reason, we remit back this issue as well to the Assessing Officer. If the expenditure is found to be genuine, the same shall be allowed in this assessment year. This issue is answered accordingly.

15. The same conclusion is drawn in respect of the next assessment year 1998-99 in ITA No.553 of 2007.
16. Both the appeals are disposed of in the aforesaid terms.

(A.K. SIKRI)
JUDGE

(M.L. MEHTA)
JUDGE

MAY 11, 2011
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