

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

+ **ITA No.1115 of 2009 with ITA No.1122 of 2009**

% Reserved On: May 18, 2011.
Pronounced On: June 03, 2011.

ITA No.1115 of 2009

COMMISSIONER OF INCOME TAX . . . Appellant

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

VERSUS

SHRI MUKESH LUTHRA . . . Respondent

through: Mr. Ajay Vohra with Ms. Kavita
Jha and Mr. Somnath Shukla,
Advocates.

ITA No.1122 of 2009

COMMISSIONER OF INCOME TAX . . . Appellant

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VERSUS

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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. On 18.05.2001, ITA No.1115 of 2009 was admitted on the following substantial question of law:

“Whether order passed by ITAT is perverse in law and on facts when it deleted the addition of ₹92,29,561/- ignoring the material fact that said concern was a dummy concern and that the money was reflected in the regular books of accounts though found during the course of search and therefore, the addition could be made only in the regular assessment.”

2. The question of law in ITA No.1112 of 2009 is the same except the quantum of addition.
3. As the counsel for the parties were ready to argue the matter finally at that stage itself, the hearing also took place immediately after the admission of the appeal. The counsel for the parties took time to file the written submissions which have been filed as well. The dispute which has given rise to the aforesaid substantial question of law can be traced from the following events.

A search was carried in the case of the assessee on 30.08.2001. The assessee is a Director and one of the major shareholders of M/s CCIL which is in the business of running of

health care centre under the name and style of M/s VLCC. The assessee is also proprietor of M/s Shine International & Fashion dealing in export of garments. The assessee filed the block return on 31.12.2002 declaring undisclosed income at NIL. Block assessment was completed on 31.10.2003 at undisclosed income for the block period at ₹10,19,594/-.

4. In the course of block assessment proceedings, AO was noticed that there is a concern M/s Globe Meditech in the name of Shri Rajesh Khurana and this concern was in fact controlled by the assessee, Shri Mukesh Luthra. It was also noted by the AO that to investigate the case further, assessment in the case of Shri Rajesh Khurana for Assessment Years 1999-2000 to 2001-02 were reopened and on analysis of various evidences listed in detail in the case of Shri Rajesh Khurana. In the said order, passed on 27.02.2004, it was held that M/s Globe Meditech is, in fact, a dummy concern of Shri Mukesh Luthra, but operated in the name of Shri Rajesh Khurana. The AO reproduced the entire assessment order of Shri Rajesh Khurana in the assessment order for the present two assessment years in the name of the assessee. The AO added the income of ₹92,29,561/- in Assessment Year 2001-02 and ₹66,87,523/- in

Assessment Year 2002-03 in the hands of the assessee on substantive basis which were added in the hands of Shri Rajesh Khurana on protective basis. The assessee carried the matter in appeal before the CIT (A) in both the years.

5. In Assessment Year 2001-02, the CIT (A) set aside the assessment that any undisclosed income for the period covered by search can be assessed only under Section 158BC of the Income Tax Act (hereinafter referred to as 'the Act'). It was observed by him that if regular assessment is pending pertaining to the block period, only such income should be considered in the regular assessments, the detail of which is disclosed in the books of account maintained in the normal course of business by the assessee. Even on merits, the addition was deleted as it was held by CIT (A) that no evidence had been found to assume that the assessee is the owner of M/s Globe Meditech. The CIT (A) opined that the onus was on the AO to prove that M/s Globe Meditech belongs to the assessee, but the AO had not brought on record any material which could establish that the profits out of the business of M/s Globe Meditech were enjoyed by the assessee either through direct or circumstantial evidence. On this basis, it was held by

CIT (A) that he was unable to accept the AO's view that what is apparent is not real and that Shri Rajesh Khurana is the *benamidar* of Shri Mukesh Luthra. On this basis, he deleted the addition in Assessment Year 2001-02. In the Assessment Year 2002-03, he deleted the addition by following his order in Assessment Year 2001-02.

6. The Department/Revenue preferred appeal before the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal') against the aforesaid findings of the CIT (A) deleting the addition for both the assessment years. The Tribunal has repelled the challenge laid by the Department concurring with the opinion of the CIT (A) that the matter could be gone into and examined in the course of block assessment and addition could be made in those proceedings if the AO was in a position to establish that M/s Globe Meditech was a dummy concerned of the assessee. For this reason, the Tribunal did not go into the merits.
7. It is in this backdrop the issue that has arisen for consideration is whether addition could be made in the regular assessment

proceedings as done by the AO or it could be the subject matter of block assessment proceedings alone.

8. In an endeavour to demonstrate that the course of action taken by the AO was valid and justified, Ms. Prem Lata Bansal, learned Senior Counsel appearing for the Revenue argued that search at the premises of the assessee was conducted on 30.08.2001 and much thereafter belated return for the Assessment Year 2001-02 was filed on 31.12.2002. It is during the block assessment proceedings that the AO noticed that there was a concern M/s Globe Meditech in the name of Shri Rajesh Khurana which was, in fact, controlled by the assessee herein. Since the entries were recorded in the regular books of account maintained for M/s Globe Meditech and Shri Rajesh Khurana, proprietor thereof regularly filing the returns declaring the income earned from M/s Globe Meditech, as far as Shri Rajesh Khurana is concerned, the assessment in respect of Assessment Years 1999-2000, 2000-01, 2001-02 were reopened under Section 148 of the Act, which resulted in passing of the reassessment orders on 27.02.2004 making protective assessment in his hands. According the learned Senior Counsel, since the entries were recorded in the regular

books of account of M/s Globe Meditech, insofar as Shri Rajesh Khurana its sole proprietor is concerned, no addition could be made by the AO for the block assessment year and therefore, proceedings were rightly initiated under Section 148 of the Act. According to her, such a course of action was in conformity with the judgment of this Court in the case of **Commissioner of Income Tax Vs. Ravi Kant Jain [250 ITR 141]**, wherein it is held that the block assessment under Chapter XIV of the Act is not intended to be a substitute for regular assessment. It was also contended that unless and until the transactions were examined in the hands of M/s Globe Meditech, the AO could not have made any additions in the hands of the present assessee, Shri Mukesh Luthra. She argued that in a sense, in the case of the present assessee, the AO has only lifted the veil and found out that M/s Globe Meditech actually belonged to the assessee and not Shri Rajesh Khurana. Otherwise, all the entries have been recorded in the books of account maintained in a regular manner by M/s Globe Meditech. Therefore, the AO was justified in making the additions in the regular assessment.

9. Mr. Ajay Vohra, learned counsel appearing for the respondent, on the other hand, sought to justify the orders of the Tribunal which has held that such a course of action was available only

in the block assessment. His submission was that as per provisions of Chapter XIV-B, in the block assessment, additions can be made for income which is relatable to evidence unearthed during the course of search. Any other income would be outside the purview of block assessment and can only be added in the regular assessment proceedings. Conversely, in the regular assessment, no addition can be made for income which has its genesis in materials found during the course of search. In other words, block assessment and regular assessment are mutually exclusive. While in the block assessment, addition can only be made for undisclosed income discovered during the course of search, such income cannot be the subject matter of regular assessment. He referred to the judgment of this Court in the case of **Commissioner of Income Tax Vs. Jupiter Builders P. Ltd. [287 ITR 287 (Del)]** and the judgment of the Gujarat High Court in the case of **N.R. Paper and Board Limited and Ors. Vs. Deputy Commissioner of Income Tax [234 ITR 733]**.

10. He argued that in the present case, the apparent position is that M/s Globe Meditech is the proprietary concern of Shri Rajesh Khurana. On the basis of evidence alleged to be found during the course of search, it is the allegation of the Revenue

that the apparent is not the real, viz., that M/s Globe Meditech is not owned/controlled by Shri Rajesh Khurana but is a dummy concern of the respondent assessee. Such an allegation raised by the Revenue is sought to be substantiated by documents alleged to be found during the course of search at the premises of the respondent assessee. In that view of the matter, such addition, if otherwise sustainable, could only be made in the block assessment proceedings.

11. We have considered the respective submissions.
12. We are of the firm view that the view taken by the Tribunal is not proper in law. Learned Counsel for the Revenue is right in her contention that it is not a case where any evidence was unearthed during the course of the search. In fact, it was during block assessment proceedings the AO noticed that M/s Globe Meditech was in fact controlled by the assessee herein, though one Mr. Rajesh Khurana was shown as the proprietor of the said firm. Otherwise, entries were recorded in the regular books of accounts maintained by M/s Globe Meditech and Sh. Rajesh Khurana was even filing the income tax return declaring his income earned from M/s Globe Meditech as its proprietor. It was thus a case of lifting of the veil by the

Assessing Officer and this could be done in the regular assessment proceedings, insofar as the assessee is concerned. At the same time, protective assessment is made at the hands of Mr. Rajesh Khurana in whose case the assessment is reopened under Section 148 of the Act as that was the only course of action available qua Rajesh Khurana.

13. We, therefore, set aside the order of the Tribunal. Since the Tribunal has not gone into the merits of the additions made by the AO, the matter is remitted back to the Tribunal to decide as to whether M/s Globe Meditech was a dummy concern of the assessee herein and the order of the CIT (A) dealing with the addition holding that the assessee herein was not the *benamidar* is correct or not. The question of law is answered in the aforesaid terms, without any order as to cost.
14. The appeal is disposed of accordingly.

(A.K. SIKRI)
JUDGE

(M.L. MEHTA)
JUDGE

JUNE 03, 2011

pmc/skb