

आयकर अपीलीय अधीकरण, न्यायपीठ – “ए ”, कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH “A”, KOLKATA

(समक्ष)Before श्री महावीर सिंह, न्यायीक सदस्य, एवं/and
Shri Mahavir Singh, Judicial
Member.
श्री सी.डी.राव, लेखा सदस्य
Shri C.D.Rao, Accountant Member

आयकर अपील संख्या /

ITA Nos.1056 & 1057/Kol/2009

निर्धारण वर्ष/Assessment Years : 2004-05 &
2005-06

	- वनाम -	
(अपीलार्थी/APPELLANT) D.C.I.T., Central Circle-XIX, Kolkata	- Versus-	(प्रत्यर्थी/RESPONDENT) M/s.MBL Infrastructure Ltd., Kolkata (PAN:AACCM 0560 C)

अपीलार्थी की ओर से/ For the Appellant:

Shri Nihar Dutta Gupta

प्रत्यर्थी की ओर से/For the Respondent:

Shri S.K.Tulsiyan

सुनवाई की तारीख/Date of Hearing : 27.10.2011.

घोषणा की तारीख/Date of Pronouncement : 7.12.2011.

आदेश/ORDER

(सी.डी.राव), लेखा सदस्य
Per Shri C.D.Rao, AM

The above appeals are filed by the Revenue against the order dated 13.03.2009 of the Id. CIT(A)-Central-II, Kolkata pertaining to A.yrs.2004-05 and 2005-06 respectively.

2. There is a delay of 2 days in filing of the appeal by the Revenue for which Revenue has filed a condonation petition explaining the reasons for such delay. After considering the submissions by Revenue the delay is condoned.

3. The brief facts of the case are that search and seizure operations u/s 132(1) of the Income –Tax Act, 1961 (hereinafter referred to as the Act) were conducted at the residence and business premises of the various members of Maheswari Brothers

Group on 1910.2005 and subsequent dates. Survey operations u/s 133A of the Act were also conducted in the premises of :

i) MBL Infrastructure Ltd. (formerly Maheshwari Brothers Ltd. – present assessee company) at Burnpur, West Bengal and “B” Avenue, Sarojini Nagar, New Delhi.

ii) M/s. Maheswari Steel Processors at RIP Industrial Estate, Durgapur, West Bengal.

3.1. In response to notice issued u/s 153A(a) of the Act, the assessee company filed its return of income on 05.04.2007 and 30.03.2007 for A.Ys. 2004-05 and 2005-06 respectively, declaring total income at NIL for both the years. As per the provisions of section 115JB, the assessee declared book profits of Rs.5,87,68,118/- and Rs.7,35,20,045/- for A.Y. 2004-05 and 2005-06 respectively.

3.2. In course of the search and seizure operations, various assets, books of accounts, documents and papers were seized/impounded from the residential and business premises of the different members of the Mahaeswari group. These included seized documents bearing identification marks MBL-1, MBL-2, MBLC – 1 to 21 & CPU C/2 seized from the office of the assessee company in Kolkata. **The seized documents contained mixed entries, both of disclosed and undisclosed nature, of various members of the Maheswari group.**

3.3. All the undisclosed entries contained in the documents seized from the premises of the assessee-company were also owned up by the applicants above named and the resultant undisclosed income was offered for taxation before the Hon'ble Settlement Commission. The said fact was brought to the notice of the Assessing Officer dealing with the assessment of the assessee company under section 153A of the Act. The Assessing officer, however, ignored the submissions of the assessee company and completed the assessments for the impugned assessment years at astronomical figures on the basis of the same seized documents viz. MBL-1 already covered in the applications filed before the Hon'ble Settlement Commission. The

additions made by the AO for the impugned assessment years and the seized documents reference on the basis of which the said additions were made may be summarized as under :-

Particulars of additions made	Seized documents No.	Amount (Rs.) A.Y.2004-05	Amount (Rs.) A.Y.2005-06
Cash payments	MBL-1, Pgs.1-2	33,02,303	17,82,305
Loan refunds made in cash	MBL-1, Pg.4	11,10,000	1,00,000
Interest on loans paid in cash	MBL-1, Pg. 5	15,23,243	49,186
Cash payments	MBL-1, Pgs.9-10	----	13,84,000
Loans repaid in cash	MBL-1, Pgs.17-23	3,49,47,000	4,59,97,000
Cash payments	MBL-1, Pg.27	-----	38,00,000
Differential amount of alleged purchases	MBL-1, Pg.32	31,55,250	-----
Payments made to personnel employed in Algeria	MSP-9, Pg.75	-----	38,60,281
Total		4,40,37,796	5,69,72,772

3.4. On appeal the Id. CIT(A) on thorough examination of the documents which were placed by assessee before Assessing Officer as well as the First Appellate Authority in the form of paper books concluded that all the impugned entries in the seized documents marked MBL- 1 were:

- **either reflected in the regular books of the assessee company or other constituents of the Maheshwari Brothers Group, or**
- **duly covered in the workings of undisclosed income offered in the hands of the five applicants abovenamed before the Hon'ble Settlement Commission.**

The Ld. CIT(A) accordingly allowed the appeals filed by the assessee company for both the Assessment Years viz. A.Y. 2004-05 and A.Y. 2005-06.”

3.5. The relevant documents along with page numbers in the paper book filed before the Id. CIT(A) on which the Id. CIT(A) has relied are as under :-

- (i) Copies of the relevant pages of the impugned documents seized from the premises of the applicant company viz. MBL-1
- (ii) Affidavit dated 24.12.2007 filed by Sri Ram Gopal Maheshwari & others before the Notary Public, West Bengal owning up the impugned entries in

seized documents marked MBL-1 (pgs.1, 2, 4, 5, 6, 8-9, 17-23, 27, 30) —
pages 2-13 of Paper Book

(iii) The applications filed before the Hon'ble Settlement Commission by five applicants — **pages 36-57 of PB**

(iv) The workings of undisclosed income offered by the applicants before the Settlement Commission — **pages 58-79 of PB**

(v) The Rule 9 Reports prepared by the Department covering the relevant pages of the impugned seized documents MBL-1 — **pages 80-93 of PB**

(vi) The replies of the applicants to the Rule 9 Reports - **pages 94-98 of PB**

(vii) The order of the Settlement Commission u/s 245D(4) finalizing the undisclosed income at the figure offered by the applicants covering the entries in the impugned seized documents — **pages 99-111 of PB**

(viii) Extracts of regular books of account of the assessee company and other constituents of the Maheshwari Group containing several entries reflected in the seized documents — **pages 156-201 of PB** —

3.6. Aggrieved by this the revenue is in appeal before us.

4. At the time of hearing before us the Id. DR appearing on behalf of the revenue by referring to the various observations made by Assessing Officer in the assessment order contended that the action of Assessing Officer is justifiable. However, he neither contradicted the observations made by the Id. CIT(A) in the impugned order nor pointed out that the additions made by Assessing Officer are the subject matter of the Hon'ble Settlement Commission.

5. On the other hand, the Id. Counsel appearing on behalf of assessee by filing the detailed written submissions established the fact that all the entries are reflected in the regular books of the assessee company or disclosed by the individual directors of the group as they are pertaining to the said group.

5.1. Further by referring to the written submissions the Id. Counsel for assessee has substantiated that the seized documents based on which the Id. Assessing Officer has

made the additions has been either properly explained in the regular books of accounts or disclosed by the respective individuals before the Hon'ble Settlement Commission.

The relevant submissions are as under :-

<u>Seized document No.</u>	<u>Relevant paras in the Written submissions</u>	<u>Page Nos.</u>
MBL-1 Pgs.1-2	2.1. to 2.5.	4,5 & 6
MBL-1 Pgs 4-5	3.1 to 3.4.	7,8 & 9
MBL-1 Pgs 9-10	4.1. to 4.2.	9 & 10
MBL-1 Pgs 17-23	5.1 to 5.3.	11 to 15
MBL-1 Pg.27	6.1. to 6.3.	15 to 16
MBL-1 Pg.32	7.1. to 7.5.	16 to 18
MSP-9 Pg.75	8.1 to 8.7.	18 to 19

5.2. He further submitted that all the page nos. where it has been included in the regular books of accounts. Based on the above submissions since the aforesaid payments have either been reflected in the regular books of account of the assessee company or other constituents of the Maheswari Brothers group or disclosed in applications filed before the Hon'ble Settlement Commission. Before the AO the assessee vide letter dated 14.09.2007 submitted that the impugned payments were reflected in regular books of account. Copies of relevant ledger accounts were also filed before the AO. Copy of the said letter dated 14.09.07 is enclosed at pages 14-15 of the Paper book. The AO however, overlooked the submissions of the assessee company. In view of the above the Id. Counsel requested that the order of the AO making the aforesaid addition may be quashed and upheld the order of the Id. CIT(A).

6. After hearing the rival submissions and on careful perusal of materials available on record including the Settlement Commission order dated 9.4.2008 in respect of the following group of Members which are placed at page nos. 99 to 111

- A) SHRI PAWAN KUMAR LAKHOTIA,
- B) SHRI MARUTI MAHESHWARI,
- C) SHRI ADITYA MAHESHWARI,
- D) SHRI ANJANEE KUMAR LAKHOTIA,
- E) SMT. REKHA DEVI LAKHOTIA,
- F) SHRI RAMGOPAL MAHESHWARI,

and copies of the relevant ledger accounts which were placed at page nos.157-201 of the paper book we are of the view that the assessee company adduced conclusive evidence to prove that the undisclosed entries contained in impugned pages of seized document marked MBL- 1 belonged to the other constituents of the Maheshwari Group and were owned up by them and accepted as such by the Hon'ble Settlement Commission in orders passed u/s 245D(4) of the Act. All the impugned entries were analysed by the assessee company in detail and the entry to entry correlation with the cash workings filed by the applicants before the Hon'ble Settlement Commission were submitted by the assessee before the lower authorities. The entries of disclosed nature were also correlated with the regular books of account of the concerned persons and copies of relevant extracts of the regular accounts were filed with the A.O. As such, the ownership of the undisclosed entries by the concerned applicants and due reflection of disclosed entries in regular books of account were categorically established. Thus, the assessee company successfully rebutted the presumption of ownership of seized documents marked MBL-1 u/s 292C of the Act. The onus now shifted on the Department to disprove the claim of the assessee company by bringing on record cogent evidence in support thereof. The AO failed miserably to discharge such onus. On the other hand, the Id. CIT(A) after taking into the submissions of assessee, orders of the Settlement Commission and copies of the ledger accounts has rightly deleted the same. Therefore, we upheld the same and dismiss the appeal of the revenue.

7. In the result the appeal of the revenue is dismissed.

Order pronounced in the court on 7.12.2011.

Sd/-

महावीर सिंह, न्यायिक सदस्य
Mahavir Singh, Judicial Member
(तारीख)Date: 7.12.2011.

Sd/-

सी.डी.राव, लेखा सदस्य,
C.D.Rao, Accountant Member.

R.G.(P.S.)

आदेश की प्रतिलिपि अग्रेषित:-

Copy of the order forwarded to:

1. M/s.MBL Infrastructure Ltd., 23A, N.S.Road, 3rd floor, Kolkata-700001.
2. The D.C.I.T.Central Circle-XIX, Kolkata.
3. The CIT,
4. The CIT(A)-Central-II, Kolkata.
5. DR, Kolkata Benches, Kolkata

सत्यापित प्रति/True Copy,

आदेशानुसार/ By order,

Deputy /Asst. Registrar, ITAT, Kolkata Benches