C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 24TH DAY OF OCTOBER 2017/2ND KARTHIKA, 1939

ITA.No. 881 of 2009 ( )

AGAINST THE ORDER IN ITA 161/2006 of I.T.A.TRIBUNAL,COCHIN BENCH DATED 29-11-2007

APPELLANT/APPELLANT/REVENUE::

THE COMMISSIONER OF INCOME TAX,
THRISSUR.

BY ADVS.SRI.P.K.R.MENON,SR.COUNSEL, GOI(TAXES)
SRI.JOSE JOSEPH, SC, FOR INCOME TAX

RESPONDENT/RESPONDENT/ASSESSEE::

SHRI.B.P.SHERAFUDIN, HOTEL GAZALA INN,
SULTHANPET, PALAKKAD DISTRICT.

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 6.2.2017, ALONG WITH ITA. 1294/2009, THE COURT ON 24.10.2017 DELIVERED THE FOLLOWING:

APPENDIX

APPELLANT'S ANNEXURES

ANNEXURE A TRUE COPY OF THE ORDER OF THE ASSESSING OFFICER U/S 143(3) DTD.30.3.1999.

ANNEXURE B TRUE COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX (APPEALS) IN ITA NO.10/PGT/CIT/C II(A)/99-00 DTD.9.1.2006.

ANNEXURE C CERTIFIED COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL IN ITA 161(COCH)/2006 DTD.29.11.2007

TRUE COPY

P.S.TO JUDGE

css/

C.R.

Antony Dominic & Dama Seshadri Naidu, JJ.

I. T. Appeal Nos.881 & 1294 of 2009

Dated this the 24th day of October 2017

JUDGMENT

Dama Seshadri Naidu, J

Introduction:

An assessee did not disclose his income fully, and it led to a reassessment. On a particular plea about the source of income, the assessee pleads in defence that he sold a few bars of gold. He gave the particulars of the putative purchasers, too. A few, though not all, have been examined and found to be untrustworthy. The question is, who has the burden proof on the source of income?

2. On appeal, the appellate authority finds a new source of income. Then, the question is, can he, under section 251 of the Act, find a new source of income not dealt with by the assessing officer?

Facts:

3. The Department is the appellant; the assessee is the sole respondent; and the Assessment Year is 1995-96. In this appeal under section 260 A of the Income Tax Act ("the Act"), the Department assails the order, dt. 29-11-2007, of the Income Tax Appellate Tribunal, Cochin Bench, in ITA No. 161/2006.

4. For the Assessment Year 1995-96, the assessee, an individual, filed its return of income on 22 August 1995 disclosing a total income of ₹13,840/-. After processing the return, the Assessing Officer (AO) noticed that the assessee had not fully disclosed his income. So he issued a notice under section 148 of the Act. In April 1997, the assessee filed another return reiterating the income he had originally shown. Later, in March 1998 the assessee filed a revised return declaring total income of ₹38,030/-. In all the returns, the assessee reflected his status as "Resident". After processing the return under section 143 (3) of the Act, the AO determined the total income at ₹7,80,160/-.

5. Aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals)-II, Calicut ("the Appellate Authority"). Through his order, dt.09.01.2006, the Appellate Authority, in fact, enhanced the assessee's income by ₹2,215,116/-. He has found unexplained income in the statement of receipts and payments submitted by the assessee; it obviously missed the AO's attention.

6. Further aggrieved, the assessee filed the second appeal before the Appellate Tribunal ("the Tribunal") in ITA No. 161 of 2006. Through its order, dt.29.11.2007, the Tribunal substantially, rather than partly, allowed the appeal. Then, it was the Department's turn to come to this Court under section 260 A of the Act.

The Process of Assessment:

7. During the reassessment, the AO added ₹31,284/- towards capital gain. The assessee sold two pieces of immovable property and purchased one property in the same year. The assessee is said to have deposited the balance ₹5,00,000/- into his wife's savings-bank account. The AO found that the assessee

already possessed a house, so he could not claim exemption from capital gains. This reasoning found favour with the Appellate Authority, as well.

8. The assessee has rental income: from "Sumaya Lodge", allegedly owned by his wife and him jointly. And the rental income for that assessment year was ₹27,681/-, out of which, the assessee showed ₹13,840/-as his share of income. The AO disbelieved the assessee's claim that his wife had independent income when they had purchased the lodge. As a result, he showed the entire rental amount as the assessee's income. And it, too, merited the Appellate Authority's acceptance.

9. The savings bank account of the assessee's wife had two deposits of ₹5,00,000/- each. Asked to explain the source of these deposits, the assessee, first, maintained that they were remitted from abroad. Later, he changed his stand and said that the amounts had been borrowed from their NRE friends. Once again, he changed his stand and asserted that, while coming back to India, he brought 12 bars of gold on 26 October 1992. He is said to have sold them to his relatives and realised ₹5,00,000/-,

which he deposited into his wife's bank account. He furnished the purchasers' names, too. Of the 12 purchasers, the AO examined five but disbelieved their version. So he concluded that the source for ₹5,00,000/- remained unexplained.

10. As to the other deposit, the AO found that only ₹3,00,000/-, out of ₹5,00,000/-, had the source explained: the assessee sold his property, purchased another property, and deposited the balance ₹3,00,000/- into his wife's account. Therefore, in the end, of the two amounts deposited into the account of the assessee's wife, ₹7,00,000/- remained unexplained. Or so both the AO and Appellate Authority concluded.

The Addition or Enhancement by the Appellate Authority:

11. During the appeal proceedings, the Appellate Authority noticed that that the assessee had declared an income of ₹22,15,116/- from abroad. He perused the assessee's original return filed on 22.8.1995 and the revised return filed on 11.3.1998. He noticed that the assessee had claimed the status of "resident". In the Appellant Authority's opinion, as the assessee has claimed the status of resident, he should have offered his

"global income" for taxation. So, the Appellate Authority brought to tax the income of ₹22,15,116/- declared by the assessee as income from abroad. He issued a notice of enhancement u/s. 251(1)(i) of the Act. Though the assessee resisted the proposal, the Appellate Authority sustained the enhancement.

The Tribunal's Findings:

12. As to the undisclosed income of ₹5,00,000/-in the account of the assessee's wife, the Tribunal has felt that the assessee has discharged his primary burden. The AO could have issued summons to the remaining purchasers under section 131 of the Act. So it found no justification to sustain the addition.

13. On the addition of ₹3,00,000/-, the Tribunal upheld the findings.

14. On the addition of new income of ₹22,15,116/-, the Tribunal has held that this item of income was not before the AO. as it was not the subject of assessment. The judgment of the Delhi High Court's Full Bench in CIT v. Sardari Lal[1], fully covers the issue, and so the enhancement cannot be sustained.

1 251 ITR 864 (Del) (FB)

Submissions:

Appellant's:

15. On the addition of unexplained income of ₹5,00,000/-, Sri P.K. Ravindranath has submitted that those who allegedly purchased the bars of gold from the assessee are his own relatives. Therefore, he ought to have produced them before the AO. Even otherwise, the assessee has, according to the learned senior counsel, the statutory burden of establishing his defence that he had a proper source for the income.

16. The learned senior counsel for the revenue has taken us to section 251 of the Act to assert that the appellate authority's powers are plenary and coextensive with those of the AO. Therefore, the addition or enhancement of income, supported by cogent reasons, ought not to have been disturbed by the Tribunal.

Respondent's:

17. Smt. S.K. Devi, the learned counsel for the assessee, has entirely supported the Tribunal's findings. According to her, the assessee did all he could to prove that he had sold the bars of

gold and realised the money. First, the AO had no grounds to disbelieve the witnesses he examined. Second, nothing prevented the AO to summon the other purchasers, whose details the assessee had given.

18. The learned counsel has taken pains to drive home her contention that adding new income by the appellate authority is beyond his powers under section 251 of the Act. The provision, at best, permits the appellate authority to re-examine what has already been considered by the AO but not what has never been in the AO's contemplation.

19. True, both the learned counsel have relied on a profusion of precedents. We will refer to them during our discussing the issues.

20. Heard Sri PK Ravindranatha Menon, the learned senior counsel for the revenue, and Smt. SK Devi, the learned counsel for the assessee, besides perusing the record.

The Questions of Law Framed by the Revenue:

1. Is the Tribunal right in holding that the Commissioner of Income-Tax (Appeals) is not justified in enhancing the assessment

by taking the assessee's status as 'residnet' and by bringing to tax the income earned by him outside India?

2. Given the first appellate authority's special powers under the Income Tax Act,1961 is the Tribunal right in (a) interfering with the enhancement effected by the appellate authority, (b) holding that the enhancement contemplated under Sec. 251 cannot be equated with that available to the AO under Section 147 of the Act?

3. Is the Tribunal justified in raising a dispute about the assessee's status? And has the Tribunal rightly concluded on the assessee's status?

4. Has the assessee discharged his burden of proof on the source of learned counsel has taken pains to drive home her contention that 5,00,000/- the assessee deposited into his wife's account? Or is the Tribunal justified in deleting the addition of learned counsel has taken pains to drive home her contention that 5,00,000/-?

Discussion:

21. Succinctly stated, we need to examine two issues: (1) Has the assessee discharged what is stated to be the primary burden that he did sell his bars of gold and deposited the amount into his wife's account? (2) Has the Appellate Authority the

power under section 251 to add to or enhance the assessee's declared income from a source never considered by the AO?

The Burden of Proof:

22. It is a truism to say that the Evidence Act per se does not apply to the proceedings under the Income Tax Act, with its own provisions on the burden of proof. In other words, the A.O. is a quasi-judicial authority not fettered by technical rules of evidence and pleadings; he is entitled to act on materials which may not be accepted as evidence in a court of law. Referring to the Indian Income Tax Act, 1922, a Constitution Bench of the Supreme Court has held in Dhakeshwari Cotton Mills Ltd v. CIT[2] that the Income-tax Officer is "not fettered by technical rules of evidence and pleadings, and that he is entitled to act on material which may not be accepted as evidence in a Court of law, but there the agreement ends; because it is equally clear that in making the assessment under sub-section (3) of section 23 of the Act, the Income-tax Officer is not entitled to make a pure guess and make an assessment without reference to any evidence

2 (1954) 26 ITR 775 (SC)

or any material at all. There must be something more than bare suspicion to support the assessment under section 23(3)."

23. Before the amendment by Act 23 of 2012, Section 68 of the Act read to the effect that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee does not explain the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year.

24. In Kale Khan Mohammad Hanif v. CIT[3] the Supreme Court, in answering the question "whether the burden of proving the source of the cash credit is on the assessee" has observed that "the onus of proving the source of a sum of money found to have been received by the assessee is on him. If he disputes the liability for tax it is for him to show either that the receipt was not income or that if it was, it was exempt from taxation under the Act. In the absence of such proof, the Income-tax Officer is

3 [1963] 50 ITR 1(SC)

entitled to treat as taxable income."

25. In Orient Trading Co. Ltd. v. CIT[4] one of the questions referred to the Bombay High Court was whether there was any material before the Tribunal to hold that a sum standing in the books of the assessee to the credit of a third party belonged to the assessee. The Bombay High Court discussed cash credits in such cases. It observed that when cash credits appear in the accounts of an assessee, whether in his own name or in the name of third parties, the Income-tax Officer is entitled to satisfy himself on the true nature and source of the amounts entered, and if, after investigation or inquiry, he is satisfied that the assessee does not explain those entries, he could regard them as representing the undisclosed income of the assessee. When these credit entries stand in the name of the assessee himself, the burden is undoubtedly on him to prove satisfactorily the nature and source of these entries and to show that they constitute no part of his business income liable to tax. When, however, entries stand, not in the assessee's own name, but in the name of third parties, there

4 [1963] 49 ITR 723 (Bom)

has been some divergence of opinion expressed on the question of the burden of proof.

26. In Sarogi Credit Corporation v. Commissioner of Income-Tax[5] the Patna High Court has held that if the credit entry stands in the names of the assessee's wife and children, or in the name of any other near relation, or an employee of the assessee, the burden lies on the assessee, though the entry is not in his own name, to explain satisfactorily the nature and source of that entry.

27. But, if the entry stands not in the name of any such person having a close relation or connection with the assessee, but in the name of an independent party, the burden will, holds Sarogi Credit Corporation, still lie upon the assessee to establish the identity of that party and to satisfy the Income-tax Officer that the entry is real and not fictitious. Once the identity of the third party is established before the Income-tax Officer, and prima facie evidence is placed before him asserting that the entry is not fictitious, the burden of proof initially lying on the

5 [1976] 103 ITR 344 (Pat)

assessee can be said to have been duly discharged by him. It will not, therefore, be for the assessee to explain further on how or under what circumstances the third party obtained the money, and how or why he advanced the money as a loan to the assessee.

28. In Sona Electric Co. v. CIT[6] the Delhi High Court has held that the section clarifies that the entry can be rejected if the explanation offered by the assessed can be rejected by the ITO on cogent grounds. When such grounds are themselves based on no evidence, the question of presumption does not arise.

29. In Sumati Dayal v. Commissioner of Income Tax, Bangalore[7] the Supreme Court has held that where a receipt is sought to be taxed as income, the burden lies on the Department to prove that it is within the taxing provision and if a receipt is in the nature of income, "the burden of proving that it is not taxable because it falls within exemption provided by the Act lies upon the assessee. But, in view of Section 68 of the Act, where any sum is found credited in the books of the assessee for any previous year the same may be charged to income tax as the

6 152 ITR 507 Delhi
7 [1995] 214 ITR 801 (SC)

income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory. In such a case there is prima facie evidence against the assessee, viz., the receipt of money. And if he fails to rebut, the unrebutted evidence can be used against him to hold that the receipt reflects income.

30. Where the explanation offered by the assessee about sums found credited in the books is not satisfactory there is, prima facie, evidence against the assessee, viz; the receipt of money, the burden is on the assessee to rebut the same and, if he fails to rebut, it can be held against the assessee that it was a receipt of an income. So held the Supreme Court in CIT v. Smt. P.K. Noorjahan.[8]

31. Culling out from a Catena of case law, Kanga & Palkhivala's The Law and Practice of Income Tax[9] has observed that if the assessee has adduced evidence to establish prima facie the source of cash credit, the onus shifts to the Department. The

8 [1999] 237 ITR 570 (SC)
9 10th Ed., Lexis Nexis, N. Delhi, p.1360 (Vol.I)

cogent evidence of the assessee cannot be rejected based on conjectures and assumptions. At the same time, the assessee must produce cogent evidence to rebut the presumption; a bald explanation is not enough. The mere furnishing of or the mere fact of payment by an account payee cheque, or mere identification of donor or creditor, or the mere submission of the confirmatory letter by the creditor is by itself not enough to shift the onus on to the Department, although these facts may, along with other facts, be relevant in establishing the genuineness of the transaction.

32. Here, initially, the assessee changed version three times about the source of ₹5,00,000/-: that the amount was remitted from abroad; that his NRE friends lent the money; that he sold the bars of gold. The AO examined five witnesses; none inspired confidence or sounded even remotely truthful. True that the assessee provided the particulars of the other alleged purchasers, too. Equally true is the fact that the principle of falsus uno, falsus omnibus does not apply to the testimonies in the courts of India. In other words, those unsummoned witnesses

might have thrown more light on the issue, and the falsity of the witnesses already examined could have posed no hurdle. But, at the same time, we cannot discount the diligent efforts by the AO to get at the truth.

33. To put it simply, we may observe that by changing his versions frequently and by producing witnesses who inspired no confidence, the assessee did not discharge his primary burden. Absent that discharge, we cannot insist that the AO could have probed further and further. Suffice it to say that the source for ₹5,00,000/-, one of the two deposits, remained unexplained–even prima facie. So, we see no justification for the Tribunal to upset the AO's well-reasoned findings, which later stood affirmed by the Appellate Authority. We therefore reverse the Tribunal's finding on the source of income for the assessee to deposit ₹5,00,000/- in his wife's savings bank account.

34. On the deposit of another ₹5,00,000/-, the AO and the Appellate Authority found that ₹2,00,000/- was unexplained. As the Tribunal did not disturb this finding, the entire unexplained income of ₹7,00,000/- remains undisturbed.

New Income:

35. As we have already mentioned, from the assessee's returns, the Appellate Authority noticed that the assessee claimed the status of 'resident' but did not bring to tax his income of Rs. 22,15,116/- from abroad. So the authority enhanced the undisclosed income.

36. The Appellate Authority's action was attacked on one principal plank: Has the Appellate Authority the power under section 251 of the Act to add income not at all considered by the AO? Of course, the assessee did plead that his mentioning his status as 'resident' was by oversight. To justify, the assessee asserts in his other returns about gift tax and wealth tax, he mentioned his status as 'non-resident'.

The Ambit of Appellate Power:

37. To begin with, let us examine section 251 of the Act. As the assessment year was 1995-96, we will examine the provision as stood then. Before the amendment by Act 18 of 2008, section 251 read as:

251. Powers of the [* * *] Commissioner (Appeals).– (1) In

disposing of an appeal, the [* * *] Commissioner (Appeals) shall have the following powers–

(a) in an appeal against an order of assessment he may confirm, reduce, enhance or annul the assessment; [* * *]

(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;

(c) in any other case, he may pass such orders in the appeal as he thinks fit.

(2) The [* * *] Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation.–In disposing of an appeal, the [* * *] Commissioner (Appeals) may consider and decide any matter arising out of proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the [* * *] Commissioner (Appeals) by the appellant.

38. The provision clarifies that in an appeal against an order of assessment, the Appellate Authority may confirm, reduce, enhance, or annul the assessment. In an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty. The explanation to the provision further emphasizes that the Appellate Authority may consider and decide any matter arising out of proceedings in which the order appealed against was

passed, though such matter was not raised before him by the appellant.

Precedential Position:

39. A Full Bench of this Court in the CIT v. Best Wood Industries and Saw Mills[10] has examined the powers of the AO, but not the Appellate Authority. It has held that once the assessment is reopened for any valid reason recorded under Section 148(2), then the entire assessment is open for the AO to bring to tax any item of escaped income which comes to his notice in such reassessment.

40. Under the old Income Tax Act, the corresponding provision is section 31. Interpreting that provision, the Supreme Court in CIT v. Kanpur Coal Syndicate[11] has held that under section 31(3)(a), in disposing of an appeal, the Appellate Authority may confirm, reduce, enhance or annul the assessment; under clause (b), he may set aside the assessment and direct the Income-tax Officer [now AO] to make a fresh assessment. The Appellate Authority has, therefore, plenary powers in disposing

10 331 ITR 63 (Ker) (FB)
11 53 ITR 225 (SC)

of an appeal. "The scope of his power is conterminous with that of the Income-tax Officer. He can do what the Income-tax Officer can do and also direct him to do what he has failed to do."

41. As we can see, CIT v. P. Mohanakala[12] deals with the powers of High Court in interfering with the findings of fact– and concurrent findings, at that–by re-appreciating the evidence. The Supreme Court has held in the negative. The Supreme Court in Jute Corpn. of India Ltd. v. CIT[13] has stated that the declaration of law is clear that the power of the Appellate Authority is co-terminus with that of the Income Tax Officer, and if that is so, there appears to be no reason why the appellate authority cannot modify the assessment order on an additional ground even if not raised before the Income Tax Officer. No exception could be taken, held the Supreme Court in Commissioner of Income Tax, M.P., Bhopal vs. M/s. Nirbheram Deluram[14] to this view as the Act places no restriction or limitation on exercising appellate power. Even otherwise, an

12 291 ITR 278
13 (1991) 187 ITR 688 (SC)
14 224 ITR 610

appellate authority while hearing the appeal against the order of a subordinate authority, has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitation, if any, prescribed by the statutory provisions. Absent any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have.

42. In CIT v. Shapoorji Pallonji[15] the assessment year was 1947-1948, and the case was finally decided in 14.02.1962. So the Act considered was pre-Independence enactment. Examining section 31 of the old Act, the Supreme Court has held that there is no doubt that the appellate authority can "enhance the assessment". This power must, at least, fall within the words "enhance the assessment", if they are not to be rendered wholly nugatory.

43. Now, we may examine the authorities that also have dealt with the powers of the appellate authority but seem to have taken a divergent path.

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15 44 ITR 891

44. In CIT v. Rai Bahadur Hardutroy Motilal Chamaria,[16] a three-Judge Bench of the Supreme Court has observed that it is only the assessee who has a right conferred under section 31 to prefer an appeal against the order of assessment made by the Income-tax Officer. If the assessee does not appeal the order of assessment becomes final subject to any power of revision that the Commissioner may have under section 33B of the Act. Therefore, it would be wholly erroneous to compare the powers of the appellate authority with the powers possessed by a court of appeal, under the Civil Procedure Code. The Appellate Assistant Commissioner is not an ordinary court of appeal. It is impossible to talk of a court of appeal when only one party to the original decision is entitled to appeal and not the other party, and because of this peculiar position the statute has conferred very wide powers upon the appellate authority once an appeal is preferred to him by the assessee.

45. Chamaria goes on to hold that the appellate authority has no jurisdiction under section 31(3) of the Act to

16 66 ITR 443

assess a source of income not processed by the Income-tax Officer "and which is not disclosed either in the returns filed by the assessee or in the assessment order," and therefore the appellate authority cannot travel beyond the subject-matter of the assessment. In other words, the power of enhancement under section 31(3) of the Act is restricted to the subject-matter of assessment or the sources of income considered expressly or by clear implication by the Income-tax Officer from the viewpoint of the taxability of the assessee.

46. A question regarding powers of the first Appellate Authority came up for consideration before the Supreme Court recently in CIT v. Nirbheram Daluram.[17] Following the earlier decisions in Kanpur Coal Syndicate and Jute Corporation of India, the Supreme Court reiterated that the appellate powers conferred on the Appellate Commissioner under Section 251 could not be confined to the matter considered by the ITO, as the Appellate Commissioner is vested with all the plenary powers which the Income Tax Officer may have while making the

17 [1997] 224 ITR 610(SC)

assessment.

47. Indeed, examining Daluram's holding, a Division Bench of the Delhi High Court in CIT v. Union Tyres, Delhi,[18] has observed that Daluram did not comment whether these wide powers also include the power to discover a new source of income. So, Union Tyres concludes that the principle of law laid down in Shapoorji and Chamaria still holds the field.

48. The principle emerging from various pronouncements of the Supreme Court, Union Tyres observes, is that the first Appellate Authority is invested with very wide powers under Section 251(1)(a) of the Act and once an assessment order is brought before the authority, his competence is not restricted to examining only those aspects of the assessment about which the assessee makes a grievance and ranges over the whole assessment to correct the Assessing Officer not only regarding a matter raised by the assessee in appeal but also regarding any other matter considered by the Assessing Officer and determined in assessment.

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18 [1999] 240 ITR 556

49. There is a solitary but significant limitation, according to Union Tyres, to the power of revision: It is not open to the Appellate Commissioner to introduce in the Assessment a new source of income and the assessment must be confined to those items of income which were the subject-matter of the original assessment.

50. In course of time, Union Tyres was doubted. In CIT v. Sardari Lal & Co.,[19] the same issue–whether the appellate authority has the power under section 251 to discover a new source of income–was referred to a Full Bench. After examining the authorities holding the fielding on that issue, the learned Full Bench has held that the inevitable conclusion is that whenever the question of taxability of income from a new source of income is concerned, which had not been considered by the assessing officer, the jurisdiction to deal with the same in appropriate cases may be dealt with under section 147, or section 148, or even section 263 of the Act if requisite conditions are fulfilled. It is inconceivable, according to Sardari Lal, that in the presence of

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19251 ITR 864 (Del) (FB)

such specific provisions, a similar power is available to the first appellate authority. Eventually, Sardari Lal upheld the decision in Union Tyres.

51. Undeniably, the precedential position on the powers of the first appellate authority under section 251 undulates. There are seeming contradictions. But, as held by Union Tyres, and as affirmed on reference by Sardari Lal, there is a consistent judicial assertion that the powers under section 251 are, indeed, very wide; but, wide as they are, they do not go to the extent of displacing powers under, say, sections 147, 148, and 263 of the Act.

52. Therefore, we are in respectful agreement with the view taken by the Full Bench of the High Court of Delhi in Sardari Lal. As a corollary, we hold that the Tribunal's deleting the enhancement of ₹22,15,116/- and canceling the order of the CIT (A) on that issue call for no interference.

53. We thus answer the questions of law partly in the Revenue's favour and allow IT Appeal No.881 of 2009 in part. No order on costs.

IT Appeal No.1294 of 2009:

54. This appeal by the Revenue concerns the penalty proceedings.

55. The Appellate Authority enhanced the assessee's income on account of what is said to be newly found unexplained income. He invoked section 271 (1) (c) of the Act and imposed a penalty of ₹10,00,000/-.

56. Aggrieved, the assessee filed before the Appellate Tribunal, which through its order, dt.21.12.2007, deleted the penalty.

Given our decision in IT Appeal No.881 of 2009, we confirm the order of the Appellate Tribunal. So this appeal stands dismissed. No order on costs.

Sd/-Antony Dominic, Judge

Sd/- Dama Seshadri Naidu, Judge

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P.S.TO JUDGE