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

\+ W.P.(C) 369/2014 & CM Appl.740/2004

DHOLADHAR INVESTMENT PVT.LTD ..... Petitioner
Through Dr. Rakesh Gupta, Ms Rani Kiyala, Mr Rishabh Kapoor and Ms Khusbu Upadhya, Advs.

versus

COMMISSIONER OF INCOME TAX ..... Respondent
Through Mr Ruchir Bhatia, jr. standing counsel for Mr Sanjeev Sabharwal, sr. standing counsel

\+ W.P.(C) 370/2014

DHOLADHAR INVESTMENT ..... Petitioner
Through Dr. Rakesh Gupta, Ms Rani Kiyala, Mr Rishabh Kapoor and Ms Khusbu Upadhya, Advs.

versus

COMMISSIONER OF INCOME TAX ..... Respondent
Through Mr Ruchir Bhatia, jr. standing counsel for Mr Sanjeev Sabharwal, sr. standing counsel

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.V.EASWAR

ORDER

% 31.01.2014

These petitions urge the Court in exercise of its powers under Article 226 of the Constitution to set aside the orders of the Income Tax Appellate Tribunal refusing to rectify its orders under section 254(2) of the Income Tax Act. The assessee/petitioner had in the relevant assessment years 1998-99 and 1999-2000 declared its income. During the course of enquiry it was conceded that profits were made by it relating to accommodation entry operations. They were shown in the credit side of the profit and loss accounts

for the relevant years and in the income tax returns for those years. In the assessments, those amounts were added u/s 68 of the Act. The petitioner was aggrieved by the orders of the assessing officer and appealed to the CIT(A) and later unsuccessfully before the ITAT. Subsequently, it approached the ITAT u/s 254(2) seeking rectification of the order of the Tribunal that in both the years, even though the sum of Rs.6,24,000/- (for 1998-1999) and Rs.14,05,331/- (for 1999-2000) had been offered for taxation, the tax authorities nevertheless proceeded to assess parts of these – to the tune of Rs.4,99,000/- and to the tune of Rs.14,05,331/- in the assessment years 1998-99 and 1999-2000 respectively – as income from unexplained sources and added them back under section 68, and this constituted a mistake apparent from the record which the Tribunal ought to rectify. Counsel sought to rely upon the discussion by the ITAT in its impugned orders as well as the orders of the CIT (Appeals) to say that even though this aspect was highlighted there was no finding. It is unjustified to not rectify these orders.

This court has considered the submissions. A perusal of the grounds of the appeal reproduced in the ITAT's order clearly show that the ground of appeal in respect of the addition was general and did not advert to a double entry or a double taxation.

It is true, as held by the Supreme Court in a long line of cases, that the Tribunal is duty-bound to consider all the grounds, the evidence pro and con, the contentions of the parties before it and all other material brought to its notice in a judicial spirit and should not feel incommoded by technicalities: see *Omar* Salay *Mohamed* Sait V. CIT (1959) 37 ITR 151 (SC), *Esthuri Aswathaiah V CIT* (1967) 66 ITR 478 (SC), *CIT V K.Y.Pilliah & Sons* (1967) 63 ITR 411 (SC), *CIT V Walchand & Co. (P) Ltd.* (1967) 65 ITR 381 (SC) and *Udhavdas Kewalram V CIT* (1967) 66 ITR 462 (SC). The duty is limited

to the points raised before it. It would be placing an impossible burden on the Tribunal if it is ordained to rule upon aspects and contentions which were not raised by the parties before it or to deal with pleadings, evidence or material to which its pointed attention was not drawn in the course of the proceedings, and which lies buried in the forest of papers filed by the parties. The present case is typical. The assessee did not raise the point that there was double addition in the sense that though the amount was shown in its profit and loss account and in the return of income, still the assessing officer made a separate addition. This was a question of arithmetic, yet it was not raised either before the assessing authority or before the first appellate authority; nor was it raised before the Tribunal in the grounds or in the course of the arguments. Nevertheless, the assessee asks us to pin down the responsibility for not dealing with this aspect upon the Tribunal, the second appellate authority, on an implausible argument based on section 254(2) that a paper-book was filed before the Tribunal. It is contended that when a ground is raised that the addition made is contrary to law and the facts, it would include the aspect of a double addition though such a plea was not specifically taken. The argument is as unreasonable as it is specious. The fact that an appeal under the Income Tax Act is not a *lis* between the parties and is only an adjustment of the tax liability does not also imply that the Tribunal shall exhibit such an imagination that it would be required to deal with issues that could have been, but were not, raised. Whether there was a double addition is a factual question and the Tribunal can deal with it only upon its attention being drawn to it by the aggrieved party. The assessee is bound to ventilate its grievance on all its aspects and if this is done, the Tribunal ought to deal with all of them in a judicial spirit, keeping in mind the judgments of the Supreme Court cited supra. The Tribunal is not expected to unearth evidence or material to

which its attention was not drawn by the parties, nor to explore the arena to find out what possible contentions the parties could have taken, and grant them relief on the basis of such an expedition in exercise of the limited jurisdiction u/s 254(2) which confers upon the Tribunal only a power to rectify a mistake apparent from the record and not to indulge in a review. We are unable to accept the contention advanced before us on behalf of the assessee, that it somehow ought to have occurred to the Tribunal that there was a double addition, that it ought to have examined the record, found that in fact there was a double addition and granted relief to the assessee on that basis, when it did not occur to the assessee to raise this plea all through, though it was he who is aggrieved by the addition. He did not file any additional ground before the Tribunal, nor did he raise a specific plea that there was double addition.

Having regard to these circumstances the court is unpursuaded by the counsel's submission that the issue of double taxation was only a facet of the grounds made before the ITAT. The objections being devoid of merit are accordingly dismissed.

S. RAVINDRA BHAT, J

R.V.EASWAR, J

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Addl. (Judl.)
(Appellate)
High Court of Delhi
New Delhi