D.D. Malhan Vs. Dy. Cit

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Court : Delhi

Decided On : Aug-02-2004

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Appeal No. : IT(SS)A No. 284/Del/2002 Block period 1 April 1989 to 27 July 1999 2 August 2004

Appellant : D.D. Malhan

Respondent : Dy. Cit

Advocate for Pet/Ap. : Anil Jain,;for the assessed; R.A. Gupta,;for the Revenue

Judgement :
ORDER

B.R. Jain, A.M.

These 'cross-appeals arise from the order dated 28-6-2002, of the learned Commissioner (Appeals)-III, New Delhi, for the block period 1-4-1989 to 27-7-1999, setting out the grounds as under

assessed's grounds :

'1. That, on the facts and in the circumstances of the case, the Hon'ble Commissioner (Appeals)-III, . has erred in confirming the, action. under section 132 of the Income Tax Act and consequential action and issue of notice under section 158BC of the Act by the learned assessing officer which are bad in law.

2. That, on the facts and in the circumstances of the case, the Hon'ble Commissioner (Appeals) has erred in confirming the addition of Rs. 2,53,847 during the assessment years 1997-98, 1998-99 and 2000-01 on account of purchase of Australian dollars.

3. That, on the facts and in the circumstances of the case, the Hon'ble Commissioner (Appeals) has erred in confirming the addition of Rs. 3,50,000 for the assessment year 1990-91 as unexplained income of the appellant.

4. That, on the facts and in the circumstances of the case, the Hon'ble Commissioner (Appeals) has erred in confirming the addition of Rs. 2,00,000 made on account of cash found Rs. 2,89,200 belonging to the firm in which the appellant is partner.

5. That, on the facts and in the circumstances of the case, the Hon'ble Commissioner (Appeals) has erred in confirming the addition of Rs. 8,00,000 made for the assessment year 1997-98 being cash deposited by the appellant in his saving bank account No. 1342.

6. That, on the facts and in the circumstances of the case, the Hon'ble Commissioner (Appeals) has erred in confirming the addition of Rs. 9,00,000 made by the learned assessing officer for the assessment year 1990-91 out of opening balance of capital of Rs. 9,19,490 as on 1-4-1989.

7(a) That, on the facts and in the circumstances of the case, the Hon'ble Commissioner (Appeals) has erred in confirming the addition of Rs. 2,26,740 for the assessment year 1990-91 on account of no evidence for filing the regular returns.

7(b) That, on the facts and in the circumstances of the case, the Hon'ble Commissioner (Appeals) has erred in not passing the order against the addition of Rs. 1,84,143 made by the learned assessing officer, being difference in returned income for the following assessment years.

Asst. yr.

Disclosed income as shown in block period returns (Rs.)

Disclosed income as shown in regular returns (Rs.)

Difference (Rs.)

1994-95

86,700

54,183

32,513

1995-96

1,86,245

57,945

1,28,300

1996-97

2,97,700

2,74,370

23,330

Total

1,84,143

8. That, on the facts and in the circumstances of the case, the Hon'ble Commissioner (Appeals) has erred in confirming the interest levied under section 158BFA(l) of the Act in the absence of passing the speaking order and in the interest of natural justice.'

Revenue's, grounds :

'1. On the facts and in the circumstances of the case, the learned Commissioner (Appeals) has deleted the addition of Rs. 44.90 lakhs without taking any cogent Explanationn from the assessed.

2. The Commissioner (Appeals) has erred in deleting the addition of Rs. 32.5 lakhs as sale consideration of property J-3, Saket. Doing so, she has not considered the facts shown in the handwritten paper of D,D. Malhan seized during search.'

2. Ground No. 1 has not been pressed by the assessed. The same is dismissed as 'not pressed.

3. In ground No. 2 the assessing officer vide p. 2 of his order found that the assessed's two sons, namely, Shri Sanjeev Malhan and Shri Manish Malhan have studied at University of Canberra, Australia. Documents have been found during the search operation at the residence of the appellant indicating huge expenses incurred in Australia. The assessed was required vide questionnaire dated 18-4-2001, to explain the source of expenditure incurred through the seized documents as found and inventoried and referred to at page Nos. 2 and 3 of the assessment order. After considering the Explanationn of the assessed, the assessing officer was of the view that following four remittances made to the children have not been explained

Rs.

(i) 1-12-1997

20,048

(ii) 1-12-1997

50,822

(iii) 29-5-1999

43,102

(iv) 13-7-1996

1,39,875

The assessing officer further stated that assessed has not given any Explanationn and as such the aggregate amount of Rs. 2,54,847 as detailed hereinabove was undisclosed income of the assessed for the block period comprising assessment year 1997-98 at Rs. 1,39,875, assessment year 1998-99 at Rs. 70,870 and for assessment year 2000-01, Rs. 43,102. The learned Commissioner (Appeals) also confirmed the addition by holding that the assessed has failed in providing the source of investment in purchasing the dollars for the amount of Rs. 2,53,847.

4. assessed's counsel, Shri Anil Jain, contends that the authorities below have not given any adverse comments on the. Explanationn as well as the documents filed in support thereof., A paper book has already been furnished before the Tribunal. In the written submissions contained in assessed's paper book at p. 4, the assessed has tendered complete and proper Explanationn in respect of all the four entries and the, documentary evidence thereof are also annexed from assessed's paper book II from pp. 67 to 74. The first entry of Rs. 20,000 was available with the assessed from cash withdrawn from M/s Malhan Builders, F20, GK-II, New Delhi, who were also searched on the same, day by the IT department. A copy of accounts duly confirmed has been filed. This amount stands repaid on 18-12-1997, from the SB account No. 4976 of Manish Malhan with Bank of Maharashtra and evidence for entry of withdrawal made through cheque No. 669550 showing debit to the account as per copy placed at assessed's paper book p. 68 is on record. The block assessment of Malhan builders has also been completed besides completion of regular assessment and no adverse view has been taken by the assessing officer in this respect. The second entry of Rs. 50,822 comprises of a loan of Rs. 40,000 taken in two parts for Rs. 20,000 each from M/s Malhan Builders as per copy of account placed at assessed's paper book p. 69. This amount was duly recorded in the books of that firm. As stated earlier, this firm was also searched and has been assessed both for block period as well as regular assessment and no adverse view has been taken for making advance of the said Rs. 40,000. The balance Rs. 10,000 has been spent out of own savings of the

assessed which was available out of cash in hand and withdrawals made from time to time which is commensurate with the status of the assessed.

The third entry of Rs. 43,102 represents the purchase of foreign currency for remittance abroad. This was available out of withdrawal of Rs. 1 lakh made from Mr. Aman Malhan's SB a/c No. 2984 with Bank of Maharashtra on 4-4-1999, as is evident by the copy of bank account placed at assessed's paper book p. 71. A confirmation for taking this loan was filed before the authorities below and copy placed at assessed's paper book p: 70. The last entry of Rs. 1,39,875 was made out from the own account of the assessed. He withdrew Rs. 1,25,000 by way of demand draft from his bank account No. 1342 with Bank of Maharashtra as per copy of statement placed at assessed's paper book pp. 73 and 74 and the balance was paid out of cash in hand. Under these peculiar facts, it was contended that there was no'basis for treating the amounts as unexplained or undisclosed income for the block period.

5. On the other hand, the learned Departmental Representative contends that the learned Commissioner (Appeals) has recorded a finding of fact that the assessed has failed in proving the source of investment for purchase of dollars for Rs. 2,53,847 and before assessing officer also the Explanationn furnished was not found satisfactory as the assessed only tried to explain the acquisition without making proper linkage with the cash withdrawn. Under such circumstances, the ground needs to be rejected.

6. We have heard the parties with reference to material on record. The impugned. orders have also been perused carefully: The assessed had furnished Explanationn before the authorities below with respect to all the four transactions of Rs. 20,048, Rs. 50,822, Rs. 43,102 and Rs. 1,39,875. The learned Commissioner (Appeals) did not make any adverse comments on the Explanationns given by the assessed nor did she find that the evidence filed for source of availability of funds is insufficient. It appears that without proper application of mind on the details of sources placed on record by assessed, the learned Commissioner (Appeals) was casual in taking a decision and arbitrarily has said that the assessed has failed in proving source of investments in

purchasing the dollars for Rs. 2,53,847. This was not a correct approach of the learned Commissioner (Appeals) and she has factually erred in arriving at such a finding without appreciating the evidence available on record. The assessed is found to have explained the availability of funds for purchase of dollars for remittance abroad for the education, of his two, children in respect of remittances in aforesaid four transactions. Under such peculiar facts and in the light of the Explanationn as borne out from the assessed's arguments, we are satisfied that the revenue has failed to make out any case against the assessed and the purchase of dollars for Rs. 2,53,847 under the facts and circumstances of the case could not have been treated as 'unexplained' or undisclosed income' of the block period of the assessed. The addition so made is, thereforee, directed to be deleted.

7. Ground No. 3 relates to the addition of Rs. 3,50,000. The assessing officer at internal page No. 5 of his order observed that the seized Annexs. A-27/37, 38, 39 and 40 and Annex. A-4/23 and back side of this page revealed details of certain fixed deposits. The assessed was required to explain the details of fixed deposits of Rs. 3,50,000. The assessed has given his reply and statement of affairs, but the same being not explained properly, the assessing officer treated the same as 'unexplained income' and added the same as 'undisclosed income' of the block period for assessment year 1990-91. The learned Commissioner (Appeals) also confirmed the action of the assessing officer after considering the assessed's Explanationn by stating that the assessed's representative has vaguely argued that it belongs to different persons and in no way related to assessed.

8. assessed's counsel contends that the seized documents revealed that FDR of Rs. 50,000 was in assessed's name while the FDRs aggregating to Rs. 3 lakhs were merely, jottings on papers showing the names of different person section The assessed disowned the same before the authorities below as is evident from assessed paper book p. 9. The FDRs in original were not found. The assessing officer did not trace their origin nor did he verify from any of the bank that any such FDR ever existed. No enquiries have been made from any source to come to a conclusion that FDR was taken in assessed's name or in the name of any related person or otherwise. assessed could not have been treated as Benami without

bringing positive material on record. The onus is not discharged by Revenue. The addition of Rs. 3 lakhs is thus without any basis and material on record, the same could not have been treated as undisclosed income. As regards the FDR of Rs. 50,000 the same has been made out of cash in hand available with assessed as on I-4-1989 and is borne out from assessed paper book p. 34 where cash and bank balances were Rs. 50,500. This amount was not found utilised, for any other purpose. The assessed's Explanationn was not considered in right perspective and no defect has been found therein. The learned Commissioner (Appeals) was thus casual in her approach in alleging that the counsel has vaguely represented the matter.

9. On the other hand, the learned Departmental Representative, Shri Gupta, contends that the document was found from the assessed. Burden was on him to show that FDRs as narrated did not belong to him. That having not been done, the assessing officer cannot be expected to do which is beyond his knowledge and control. He, thereforee, relies on the decision of the authorities below.

10. In rejoinder, the learned counsel for the assessed contends that the assessed is a builder and he has to interact with so many customers and suppliers of material. In case some person left this paper at his residence, the assessed cannot be expected to explain the contents thereof, particularly when the assessed was not found to be the author of such paper. All the corners of the house and business premises were thoroughly searched, all the bank accounts are in the knowledge of the department, no evidence was found nor any corroborative material brought on record by assessing officer to show that FDR of Rs. 3 lakhs listed in the seized paper belonged to the assessed or were purchased by him. Under such circumstances no addition was called for.

11. We have heard the parties with reference to material on record. The assessed admits that FDRs of Rs. 50,000 belongs to him. This was purchased out of cash available as on 1-4-1989. assessed's balance sheet placed at paper book at p. 34 reveals that assessed had opening cash of Rs. 50,500 and this amount is stated to have been utilised towards the purchase of FDRs of Rs. 50,000. Even after rummage of all the corners of the house, the revenue was not able to lay hand

about utilisation of the said opening cash for any purpose other than the purpose stated by the assessed. Revenue has also not given any adverse comments on the availability of such balance. The balance sheet has been filed by assessed in his regular assessments and stands accepted from year to year. In that event there was no reason to disbelieve the Explanationn of assessed. The authorities below thereforee have erred in treating the source of investment in the FDR of Rs. 50,000 as unexplained without any cogent or good reasons. We are satisfied that the assessed has explained the source of availability of funds for purchase of FDR of Rs. 50,000. The addition on this count, thereforee, is directed to be deleted.

12. As regards the second part of FDR aggregating to Rs. 3 lakhs, these were not in the name of the assessed himself. The FDRs were not found. No enquiry was made by assessing officer from any of the bank or depositories. Investments in the FDRs have not been traced. No material was found as a result of search from the assessed from which it could be said that it was the investment made by the assessed. The assessed had categorically denied that these FDs belongs to him. Once the assessed denied, it was the bounden duty of authorities below to enquire into the facts and collect some cogent material before coming to the conclusion that the FDRs belong to him. Without there being any material in the possession or corroboratory evidence on record, it could not have been presumed that the assessed has made any investments in FDRs. Law lays a heavy burden on the person who alleges so, The revenue has not discharged the burden that lay upon it for alleging that FDRs belong to the assessed. Despite the fact that the assessed has explained the circumstances that he being a builder and nature of business being such that somebody might have left the paper in his premises, particularly when the assessed is also not found to be the author. He cannot be expected to do impossible as it was beyond his comprehension to give any Explanationn about a paper of which he was not found even the author. Under such peculiar facts, such an addition could not have been made as undisclosed income for the block period. The same is, thereforee, directed to be deleted.

13. Ground No. 4 relates to the addition of Rs. 2 lakhs which the assessing officer has treated as undisclosed income.

14. assessed's counsel contends that, as a result of search at the assessed's residential premises as well as business premises, cash at the residence of the assessed found was Rs. 2,89,200 while cash at the premises of Shri N.K. Malhan found was Rs. 75,105 as is borne out from the inventory prepared by the department. These two brothers are partners in M/s Malhan Builders whose premises was searched and no cash was found at the business premises. The total cash found at the residence of two brothers as aforesaid is Rs. 3,64,305. This was a business cash and was duly reflected in the cash book of M/s Malhan Builders and this was revealed from assessed's paper book I p. 37 where cash in hand on the date of search was Rs. 3,89,530. The assessment of M/s Malhan Builders has been completed for the block period as well as regular assessment has been made. No addition has been made in the hands of the firm nor any adverse view was taken by the assessing officer. The partners carry cash for safe keeping at the residence and do not leave any cash in the business premises for the fear of theft, etc. The assessed has given a proper Explanationn before the authorities below as is revealed from paper book I p. 36 but the authorities below rejected the claim without properly appreciating the facts placed before them. The addition, thereforee, made is without any basis and needs to be deleted.

15. On the other hand, the learned Departmental Representative while relying on the order of authorities below contends that the entries for withdrawal of cash were not made in the books of partnership firm M/s Malhan Builders and as such there was no force in the claim made by the assessed. Ground No. 4, thereforee, needs to be rejected.

16. We have heard the parties with reference to material on record, A search was carried at both, business as well as residential premises of the partners. The assessed is a partner along with his brother Shri N.K. Malhan in Malhan Builders. No cash was found at the- business premises of the firm. The partnership is a compendious name of partners. The acts of partners bind the firm. 'Business of the firm was carried through these two partners only. The nature of business is such that they are required to carry cash for making payments to the labour or suppliers of materials which reach the site at odd hours. This has been a usual practice in assessed business and common in the trade that firm's cash is carried by the

partners for making business payments, besides for safe keeping of the cash. This was not an unusual act of the partners. These partners explained that cash belong to the partnership firm. The total cash in the books of the firm was Rs. 3,89,531 which was more than the cash of Rs. 3,64,305 found from the residential premises of the two partners namely Shri D.D. Malhan and Shri N. K. Malhan. The revenue also did not find any material that the cash balances in the books of M/s Malhan Builders at Rs. 3,89,531 has been utilised by firm or its partners for making any payment for expenses or investments, etc. Even after searching the business as well as residential premises, the assessing officer did not make any adverse comments on cash available in the books of the partnership-firm. Before us, the assessed's Explanationn is found reasonable. Under the peculiar facts and circumstances of the case his Explanationn has to be accepted. There are no circumstances which warranted the sum so found to be treated as undisclosed income for the block period. The additions so made are directed to be deleted.

17. Next ground relates to the sustenance of addition of Rs. 8 lakhs for the assessment year 1997-98 comprised in block period on account of cash deposited by the assessed in the SB account No. 1342, Bank of Maharashtra, New Delhi.

18. Briefly, the facts are that the assessing officer, vide internal p. 6, found that the assessed has deposited cash of Rs. 4 lakhs in account No. 1342 on 23-5-1996, and another sum of Rs. 4 lakhs on 24-6-1996. When required, the assessed explained that this amount was deposited out of money earlier drawn from the same bank account on different dates. This Explanationn of the assessed was not accepted as he was of the view that no linkage between the cash withdrawn on earlier dates and deposited on relevant date has been made by the assessed. He, thereforee, treated the deposits of Rs. 8 lakhs as unexplained income of the assessed for the assessment year 1997-98. This action stood confirmed by the learned Commissioner (Appeals).

19. We have heard the parties with reference to material on record. assessed's bank account bearing No. 1342 with Bank of Maharashtra, New Delhi, was found at the time of search. This was disclosed account in the regular returns of the assessed. The assessing officer, however, scrutinised the bank account again and

observed two deposits in cash, of Rs. 4 lakhs each, dated 23-5-1996 and 29-6-1996. The bank statement also reveals that prior to deposit of Rs. 4 lakhs on 23-5-1996, the assessed has withdrawn cash aggregating to Rs. 4 lakhs on two different dates as under

12-5-1996

Rs. 1 lakh

18-5-1996

Rs. 3 lakhs comprising of Rs. 2 lakhs, Rs. 50,000 and another sum of Rs. 50,000

Likewise, prior to the date of deposit on 26-5-1996, the assessed has made withdrawals of Rs. 4 lakhs on four different dates as under :

23-5-1996

3,00,000

30-5-1996

40,000

6-6-1996

50,000

14-6-1996

10,000

4,00,000

As a result of search in assessed's business as well as residential premises, the revenue was not able to find any evidence regarding utilisation of the aforesaid withdrawals made from his said bank account for any purpose whatsoever. Unexplained cash was also not found. The assessed is a business man and has made withdrawals for using the same in his business but as the amount could not be utilised, he is found to have deposited the cash so withdrawn back into the bank on 23-5-1996 and on 24-6-1996. Essentially the Explanationn given by the assessed is reasonable and had to be accepted in the absence of any contrary evidence being in possession of revenue. The same, thereforee, could not be treated as unexplained income as referred by the assessing officer while making the assessment of undisclosed income under Chapter XIV-B of the Act.

The additions so made, thereforee are directed to be deleted.

20. Next ground relates to the addition of Rs. 9 lakhs made on account of opening balance of capital of Rs. 9,19,490.

21. The assessing officer at p. 6 vide para 8 observed that the assessed, has filed capital account showing an opening balance of Rs.9,19,490 and finding no Explanationn about the availability of opening balance in capital account as on 1-4-1989, the amount was treated as income from undisclosed source of the assessed for the assessment year 1990-91 and included as part of the undisclosed income for the block period comprising of period from 1-4-1989 to 27-7-1999. The learned Commissioner (Appeals) confirmed the action.

22. We have heard the parties with reference to material on record. The assessed has been regularly assessed to tax and has enclosed the balance sheet and the assets reflected therein in his regular returns. The perusal of, balance sheet reveals that one of the assets is property bearing No, D-642, Chittarajan Park, New Delhi, of the value of Rs. 4,75,000 for which the assessed has placed a copy of conveyance deed dated 17-12-1986 as an evidence for purchase of property in that year. This investment was beyond the block period. Likewise, assessed had disclosed investment in capital account in M/s Malhan Builders at Rs. 30,990 where he was a partner from the earlier period. Copy of capital account in M/s Malhan Builders placed at assessed's paper book p. 48 reveals that this balance is a closing balance as on 31-3-1989 and as such also this investment is beyond the block period. Likewise, another investment of the assessed is in Ocean Construction India (P) Ltd. for Rs. 3,63,000 and the assessed had appended a certificate from that concern in which it has been certified by that company that the investment was outstanding in their books as on 31-3-1989. This amount also is

an investment beyond the block period. As regards cash and bank balances of Rs. 50,500, the same are also disclosed in the income-tax returns for the year ending 31-3-1989. From the facts, it is evident that no investment in the aforesaid assets representing the opening capital of Rs. 9,19,490 was made during the block period nor the document seized reveals any undisclosed income belonging to the assessed for the block period on account of such documents. The authorities below have grossly erred in making the addition which has been made without proper appreciation of facts and evidence. The same is, thereforee, directed to be deleted.

23. Ground No. 7 relates to sustenance of addition of Rs. 2,26,740 as the assessed did not file evidence for filing of returns in regular course of assessment for the assessment years 1991-92, 1992-93 and 1993-94.

24. We have heard the parties with reference to material on record. assessed has appended vide paper book pp. 47 to 65 depicting details of share income from partnership firms besides payment of advance tax and TDS, etc. The assessed also states that the return, of income for all these years were filed and taxes had also been paid. Since a search was carried out at his premises, the documents have been mixed up and are not traceable. However, the assessed makes a claim and has placed evidence that taxes on the income are paid. Essentially all such entries of tax collected should be available on the departmental record. In case the assessed is not able to produce the evidence of returns filed, it cannot be conclusively said that returns of income in the regular course for all these years have not been filed by him. It will, thereforee, be in the interest of justice to remand the issue back to the assessing officer for verification of facts from the departmental record and find out as to whether the returns had been filed by the assessed and what treatment has been given to the advance tax land TDS collected from him. In case the revenue is able to find out that the 'said taxes remained unadjusted against any assessed tax or that, the assessed did not file any returns, the income of these years may be treated as undisclosed. The assessing officer shall however give a reasonable opportunity of being heard to the assessed before coming to any conclusion in accordance with law.

25. Ground 'No. 7(b) has not been pressed, the same is dismissed as not pressed.

26. Ground, No. 8 relates to sustenance of levy of interest under section 158BFA(l) of the Income Tax Act for late filing of return for block period.

27. We have heard the parties with reference to material on record. The assessing officer did not pass any specific order for charge of interest under section 158BFA of the Act. Perusal of the order reveals that only the penalty proceedings under section 158BFA have been initiated. We have perused mandatory provisions in this respect contained in section 158BFA(l) which deals with charging of interest on undisclosed income determined under clause (c) of section 158BC of the Act where the return is furnished after the expiry of period specified in the notice or is not furnished in compliance to the notice. Sub-section (2) of section 158BFA mandates levy of penalty on undisclosed income determined under clause (c) of section 158BC if it is : more than the returned income. Since section 158BFA deals with levy of interest and levy of penalty under two different sub-sections and the assessing officer initiated only the penalty proceedings under section 158BFA, it is thereforee, evident that no specific order for charge of interest as stated hereinabove has been made by the assessing officer. Since no specific order has been made, no demand on account of interest could be issued on that count. Such a view stands fortified by the decision in CIT v. Kishanlal HUF : [2002]258ITR359(Delhi) as also in CIT v. Insilco Ltd. : [2003]261ITR220(Delhi) . Accordingly, the interest so demanded from the assessed is directed to be deleted.

28. In revenue's appeal ground No. 1 relates to the deletion of addition of Rs. 44.90 lakhs, made on account of seized Annexs. A-4/911 and 20 and Annexs. A-11/3 and A-4/10, in assessment year 1997-98 at Rs. 28 lakhs, 1998-99 at Rs. 16.3 lakhs and 1999-2000 at Rs. 3.60 lakhs, all aggregating to Rs. 44.90 lakhs as undisclosed income for the block period.

29. The assessing officer on the basis of aforesaid seized annexures was of the view that the assessed has given advance of Rs. 40 lakhs on interest on which interest has been collected at Rs. 1,30,000 up to, September, 1998 and Rs. 3.60 Lakhs in the year ending 31-3-1999 and treated the investment as undisclosed

income of the assessed for the block period. The learned Commissioner (Appeals) being of the view that no tangible asset was found which could be said as related to or purchased by this money, held that the addition of Rs. 44.90 lakhs is uncalled for. Alternatively also as the assessing officer has made certain other additions she was of the view that once such addition has been made as undisclosed income no separate addition is required as jottings and recordings on the loose papers only were found from the assessed.

30. The learned Departmental Representative vehemently argued that the learned Commissioner (Appeals) is not justified in deleting the addition by saying that no tangible assets were found or that the additions made on account of purchase of dollars or unexplained cash investment in FDRs deposits in bank account, etc., having been made, such. additions can be attributed to the addition made on account of such seized papers. He made a reference to the seized paper placed at assessed's paper book pp. 75 to 79, which clearly indicates the calculations made for interest. Thus, the addition made by the assessing officer is to be upheld.

31. On the other hand, the assessed's counsel contends that the documents found do not indicate that any investment has been made by the assessed. It has also not been brought on record as to whether the funds have been invested or received and from whom interest has been received, was not enquired by the assessing officer nor any corroborative material brought on record. However, the learned Commissioner (Appeals) was justified in deleting the addition on the basis of jottings and recordings on the loose papers.

32. We have heard the parties with reference to material on record. A paper containing jottings of certain figures even if seized from the possession of assessed would not come within the compass of the word document and cannot be the basis for treating undisclosed income of the assessed. Such a view has also been taken by the Mumbai Bench of Tribunal in S.P. Goel v. Dy. CIT .

33. We have also perused the seized papers placed in assessed's paper book. The revenue did not bring any material on record to show that the assessed is the author of these documents. There was no corroboratory material in possession of

the revenue to hold that the assessed has in fact made any investment in advances. There is also no material on record to show that any interest has been received or accrued to assessed as income. The document speaks of some payment of interest up to 2-9-1998 and 15-4-1999, and not of any receipt of interest. In case the interest is paid, the same cannot be on account of any investment made. The revenue has not been able bring any material on record from which it could be concluded that the investment in advances was in fact made by the assessed. The revenue, thereforee, has failed to discharge the onus that lay upon them. Under such circumstances, no amount could be added as undisclosed income for the block period of the assessed. Such a view stands fortified by the decision; of, Allahabad High Court in CIT v. Dayachand Jain Vaidya, : [1975]98ITR280(All) . We are. also satisfied that these documents so seized from the assessed's premises did not give rise to any undisclosed income and as such -merely on the basis of jottings and certain writings on loose papers, it cannot be inferred that the investments were of the assessed and any income has accrued from that. The learned Commissioner (Appeals), thereforee, is justified in coming to the conclusion that no addition is warranted on account of such jottings and writings on the loose papers. Finding no merit in the grounds raised by revenue, the same stands rejected.

34. Last ground in revenue's appeal relates to the deletion of addition of Rs. 32. 50 lakhs as sale consideration of property bearing No, J-3, Saket,, New Delhi.

35. The assessing officer, vide para 7 of his order observed that assessed owned 25 per cent share in ground floor property at J-3, Saket, New Delhi. As per seized Annex. A-9/36 and seized Annex. A-8/48, he observed that the assessed has received total consideration for sale of flat at Rs. 1.65 crores, The assessed's Explanationn was that this was only an expected price and not the actual amount received or agreed to have been received, but it was not accepted by the assessing officer. He being of the view that remaining consideration might have been received out of books in cash, he proceeded to make addition of 25 per cent of Rs. 1.29 lakhs being the difference between the consideration of Rs. 36 lakhs received' and accounted in the books and the consideration of Rs. 1.65 crores referred to in the seized documents as undisclosed income of the assessed.

36. The learned Commissioner (Appeals) has found that the property has not been sold and only one portion of ground floor has been sold. She came to the conclusion that the worth of the property may be Rs. 1.65 crores but it cannot be held that the assessed has received the sale consideration of Rs. 1.65 crores and disclosed only Rs. 36 lakhs. The assessing officer thus erred to bring the difference to tax as undisclosed income for the block period. She, thereforee, deleted this addition.

37. The learned Departmental Representative, on the other hand, while referring to the seized annexure at pp. 80 and 81 of assessed's paper book contends that the seized documents had a reference to the property under consideration and the calculations made were for Rs. 1.65 crores. The assessed was, however, under obligation to have disclosed the entire consideration of the whole property in his books. This was not done, the assessing officer, thereforee, was justified in treating the difference of the disclosed amount and the recorded amount as undisclosed for the block period by bringing 25 per cent of the share of the tax as undisclosed income of the assessed.

38. On the other hand, the learned Authorised Representative supported the findings arrived at by the learned Commissioner (Appeals). It was also contended that in the same document the estimated value of second and third floor have also been mentioned but the same were occupied by the assessed himself and his brother for their residence till date and the search was also carried out in those premises. No defect, thereforee, can be found in the decision taken by the Commissioner (Appeals) and this ground of revenue has to be rejected.

39. We have heard the parties with reference to material on record and carefully perused the seized documents placed in assessed's paper book filed before us. The learned Commissioner (Appeals) has found as a matter of fact that only one portion of the ground floor has been sold up to the date of search. No other portion or floor in the building has been found sold by the assessed. There is also no documentary evidence in the possession of revenue to show that the entire property or the area referred in the paper so seized was sold by the assessed, The search was carried by the revenue in the same premises where the assessed and

his brother are also staying. The assessed has recorded the actual sale consideration of Rs. 36 lakhs: for the portion of ground floor sold,by it in the regular books of account. A copy of sale deed was placed at assessed's paper book at pp. 86 to 88 and was also available with the assessing authorities. Despite this, the buyer has not been examined to disprove the claim of assessed. The revenue has not discharged their burden to prove that the actual sale consideration is Rs. 1.65 crores and not Rs. 36 lakhs as disclosed by the assessed. No contrary material has also been placed on record to prove that the Commissioner (Appeals)'s finding is perverse and is not based on material on record. In that view of the matter no error can be found in the decision arrived at by her. The addition so deleted by the learned Commissioner (Appeals), thereforee, calls for no interference at our end. We, thereforee, confirm her decision and find no merit in ground raised by revenue which stands rejected.

40. In the result, assessed's appeal stands partly allowed while revenue's appeal stands dismissed.