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

+ ITA 182/2010

COMMISSIONER OF
INCOME TAX

Through: Appellant
Ms. Rashmi Chopra with
Mr. Chandramani Bhardwaj,
Advocates

versus

SHRI BAJRANG LAL BANSAL

..... Respondent
Through: Mr. Ashwani Taneja with
Ms. Poonam Ahuja, Advocates

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Date of Decision: 20th August, 2010

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

MANMOHAN, J:

1. The present appeal has been filed under Section 260A of Income Tax Act, 1961 (for brevity "Act, 1961") challenging the order dated 31st March, 2009 passed by the Income Tax Appellate Tribunal (in short "Tribunal") in IT(SSA) No. 262/Del/2004, for the block period 1st April, 1989 to 17th December, 1999.

2. The relevant facts of the present case are that a search was conducted at the respondent-assessee's residence by the Income Tax

Department. While unexplained cash of ₹ 68,943/- and FDR of ₹ 54,943/- was found during the search, no evidence was found suggesting a higher valuation for the property bearing No. A-156, New Friends Colony, New Delhi. However, the Assessing Officer solely on the basis of report of the District Valuation Officer made an addition of ₹ 99,33,000/- under Section 69B of the Act, 1961 on account of undisclosed investment.

3. The Commissioner of Income Tax (Appeals) deleted the addition by relying upon the decision of the Supreme Court in ***K.P. Varghese Vs. ITO, 131 ITR 597.***

4. The Tribunal upheld the aforesaid deletion by observing as under:-

“6. The deletion of addition of Rs. 99,33,000/- made on account of valuation difference also cannot be made in the absence of any evidence found in the course of search because undisclosed income in the block assessment is to be computed on the basis of material found in the search proceedings and the valuation report was admittedly not during the course of the search and was obtained as by the department subsequent thereto. No records thereon can be made on the same for treating the difference as income of the assessee. The order of the CIT(A) in deleting the same by following the decision in the case of K.P. Varghese, reported supra is perfectly justified and is accordingly upheld.”

5. Ms. Rashmi Chopra, learned counsel for the revenue submitted that the Tribunal had erred in law in deleting the addition of ₹ 99,33,000/- as undisclosed income of the respondent-assessee under Section 69B of the Act, 1961.

6. It is settled law that the primary burden of proof to prove understatement or concealment of income is on the revenue and it is only when such burden is discharged that it would be permissible to rely upon the valuation given by the DVO. (See *K.P. Varghese* (supra), *CIT Vs. Shakuntala Devi*, (2009) 316 ITR 46, *CIT Vs. Manoj Jain*, 287 ITR 285 and ITA No. 482/2010 decided by this Court on 5th May, 2010).

7. In any event, the opinion of the DVO, *per se*, is not an information and cannot be relied upon without the books of account being rejected—which has not been done in the present case. The Supreme Court in its order dated 19th October, 2009 in Civil Appeal No. 6973/2009 has held as under:-

“Delay condoned.

Leave granted.

In the present case, we find that the Tribunal decided the matter rightly in favour of the assessee inasmuch as the Tribunal came to the conclusion that the Assessing Authority (AO) could not have referred the matter to the Departmental Valuation Officer (DVO) without books of accounts being rejected. In the present case, a categorical finding is recorded by the Tribunal that the books were never rejected. This aspect has not been considered by the High Court. In the circumstances, reliance placed on the report of the DVO was misconceived.

For the above reasons, the impugned judgment of the High Court is set aside and the order passed by the Tribunal stands restored to the file. Accordingly, assessee succeeds.

Civil Appeal is allowed. No order as to costs.”

8. Further the Supreme Court in its order dated 16th February, 2010 in Civil Appeal No. 9468/2003 has held as under:-

“Having examined the record, we find that in this case, the Department sought reopening of the assessment based on the opinion given by the District Valuation Officer (DVO). Opinion of the DVO per se is not an information for the purposes of reopening assessment under Section 147 of the Income Tax Act, 1961. The AO has to apply his mind to the information, if any, collected and must form a belief thereon. In the circumstances, there is no merit in the Civil Appeal. The Department was not entitled to reopen the assessment.

Civil appeal is, accordingly, dismissed. No order as to costs.”

9. Moreover, in the present case, no evidence much less incriminating evidence was found as a result of the search to suggest that the respondent-assessee had made any payment over and above the consideration mentioned in the return of the respondent-assessee.

10. Consequently, no substantial question of law arises in the present appeal, which is dismissed in *limine*.

MANMOHAN, J

CHIEF JUSTICE

AUGUST 20, 2010

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