

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

% Judgment delivered on: 08th February, 2010

+ **ITA 220/2009**

**COMMISSIONER OF INCOME TAX-VIII
CENTRAL REVENUE BUILDING
NEW DELHI**

..... Appellant

- versus -

**ANUPAM SWEETS
HS-11, KAILASH COLONY
NEW DELHI**

..... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Rashmi Chopra
For the Respondent : Mr S.R. Wadhwa

CORAM:

**HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SIDDHARTH MRIDUL**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

SIDDHARTH MRIDUL, J

1. This appeal of the Revenue is directed against the order of the Income Tax Appellate Tribunal dated the 31st January, 2008 in IT (SS) A No.185/DEL/2006 for the block period 1st April, 1989 to 27th July, 1999.

2. A search under Section 132 of the Income Tax Act, 1961 (hereinafter referred to as 'the said Act') had been conducted at the residential premises of Sh. R.K. Gupta and Sh. Devender Gupta and their company named M/s Chintpurni Constructions Pvt. Ltd. The block assessment in the case of said M/s Chintpurni Constructions Pvt. Ltd. was completed by the Assessing Officer of the searched person vide order dated 28th September, 2001. Subsequently, the said Assessing Officer informed the Assessing Officer having jurisdiction over the assessee that an investment of Rs.11,53,000/- had been made by the assessee and a further sum of Rs.2.55 lakh had been paid to the said M/s Chintpurni Constructions Pvt. Ltd. on account of labour charges. Based on the said information, the Assessing Officer of the assessee initiated proceedings under Section 158 BC read with Section 158 BD of the said Act against the assessee. In the block assessment made in the case of the assessee, the Assessing Officer determined the undisclosed income of Rs 1,44,9413/- on account of investment in the property No.HS-11, Kailash Colony Market, New Delhi. The assessee challenged the order of the Assessing Officer, both on the ground of jurisdiction as well as on the merit of the addition.

3. The Commissioner of Income Tax (Appeals) [CIT(A)] vide his order dated 2nd April, 2006 held that the Assessing Officer had jurisdiction to assess the assessee under Section 158 BC read with Section 158 BD of the

said Act. The CIT(A), however, deleted the addition made on account of investment in the property.

4. The Tribunal allowed the appeal filed on behalf of the assessee by holding that no satisfaction, as required under Section 158 BD of the said Act was recorded by the Assessing Officer having jurisdiction over the person searched and consequently the proceedings initiated under Section 158 BD of the said Act were bad in law. In this behalf the Tribunal vide the impugned order noted that it is a settled legal position that, recording of satisfaction by the Assessing Officer, having jurisdiction of the searched person, that some undisclosed income belongs to a person other than a searched person, is mandatory before proceedings under Section 158 BD can be initiated against such other person. In this case, after going through the records the Tribunal came to the conclusion that the letter dated 14th August, 2002 predicated on which the proceedings under Section 158 BD of the said Act had been initiated by the Assessing Officer of the assessee “did not show that he was satisfied that the investment had been made by the assessee”. The Tribunal further went on to note that as a matter of fact the Assessing Officer of the said M/s Chintpurni Constructions Pvt. Ltd. had vide the assessment completed by him on the 28th September, 2001, already added on substantive basis the sum of Rs 11.53 lakh to the assessment of the said M/s Chintpurni Constructions Pvt. Ltd., and from that action of the

Assessing Officer it could be clearly inferred that the said Assessing Officer was satisfied that the investment did not belong to some other person. Therefore, the Tribunal came to the conclusion that the satisfaction, as mandated under Section 158 BD of the said Act, was not recorded. Therefore, the proceedings under Section 158 BD/158 BC, insofar as the respondent assessee was concerned, were without jurisdiction.

5. We do not find any error with the findings of the Tribunal so as to warrant any interference with the order appealed against. The appeal does not raise any substantial question of law and is consequently dismissed.

SIDDHARTH MRIDUL, J

BADAR DURREZ AHMED, J

FEBRUARY 08, 2010

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