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

\+ **ITA No. 824/2009**

COMMISSIONER OF INCOME TAX ..... Appellant
Through: Ms. P.L. Bansal, Advocate

versus

MRS. KULBIR KAUR ..... Respondent
Through: Mr. Satyen Sethi and Mr. Artatrana Panda, Advocates

% DATE OF DECISION: 02.08.2010

CORAM:
HON'BLE MR.JUSTICE A.K.SIKRI
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: A.K.SIKRI, J. (ORAL)

1. Four questions are sought to be raised by the Revenue in this appeal filed against the order dated 17th October, 2008 in respect of the assessments relating to the block period 1st April, 1989 to 17th December, 1999.

2. The first issue is in respect of the deletion of the addition of Rs.25,25,000/- made by the Assessing Officer under Section 69 of the

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Officer on the basis of a paper found during search conducted at the premises of one Mr. Batra in the cases relating to Batra Group as well as the assessee herein. During the search in the premises of Mr. Batra, one paper was found which was to the following effect: -

"D-9 Pamposh Enclave

7,00,000/-	R.S. Const.
20,00,000/-	R.S. Const.
5,40,000/-	GF M-47
3,00,000/-	Reliance
5,00,000/-	Rajesh
4,50,000/-	Rajesh
5,25,000/-	Vimal
15,000/-	Kashiji

Total 50,30,000/-"

3. Since a portion of said building D-9, Pamposh Enclave, was purchased by the assessee and consideration thereof was shown as Rs.12,15,000/-, relying upon the aforesaid paper, the Assessing Officer treated the value of the said portion at Rs.25,15,000/- that is 50% of the figure shown in the paper and on that basis treated it as unexplained investment and made the addition under Section 69 of the Act. The assessee explained that he had no connection with the said noting and his name did not appear on the piece of paper nor was it found from his premises.

4. The CIT(A) affirmed the order passed by the Assessing Officer. The ITAT has deleted this addition of Rs.12,25,000/- accepting the

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explanation of the assessee and also holding that on the basis of the figures on the seized paper without there being any corroboratory material in support thereof, the contents were not capable of describing any transaction. We agree with this finding of the Tribunal and are therefore of the opinion that no question of law arises.

5. Therefore, we are of the opinion that no question of law arises as far as this question is concerned.

6. For the purchase of the aforesaid property, the Assessing Officer queried the assessee to disclose the source of funds, the explanation given by the Assessee was that the assessee had sold another property namely B-375, Sushant Lok-I, Gurgaon for Rs.10 lakhs and the balance amount of Rs.2,25,000/- was from past savings and loan from her husband Sardar Guru Pratap Singh Grover. The Assessing Officer found that the property at Pamposh Enclave was purchased by the assessee in May'98 whereas Sushant Lok-I property was sold much thereafter i.e. November'98 and therefore, the question of utilizing Rs.10 lakhs for purchase of Pamposh Enclave property could not arise. He, therefore, treated the amount of Rs.12,25,000/- as the investment from undisclosed source and added, the same to the income of the assessee. In the appeal preferred by the assessee against this addition, initially the explanation of the assessee remained the same, namely, the amount was contributed from the sale of the property at Sushant Lok-I. However, in the

submission, the assessee also contended that a sum of Rs.65,000/- and Rs.11,10,000/- was received as loan by her from her husband. This explanation was not accepted by the CIT (A) who sustained the addition. The Income Tax Appellate Tribunal has, however, deleted the aforesaid addition taking into consideration the following aspects: -

> "On perusal of the assessee's bank account, we find that the assessee had opening balance of Rs.3,559/- as on 05.04.1998. Thereafter, the sum of Rs.65,000/-; Rs.35,000/-, Rs.10,000/- and Rs.11,10,000/- was deposited in the assessee's account by way of transfer from SIB A/c no. 100919, by clearing of cheque no. 245452, by cash and by transferred from SB A/c no. 100919 respectively, making the total balance in the bank account at Rs.12,23,559/-, out of which assessee purchased a pay order favouring Reliance Construction Company by issuing a cheque no. 744612 for Rs.12,15,000/- together with a draft commission of Rs.500/- (total Rs.12,15500/-) leaving a balance of Rs.8,059/- in her bank account. It makes it clear that the amount of Rs.65,000/- and Rs.11,10,000/- was transferred to the assessee's bank account from the SB A/c no. 100919 stated to be the saving bank account of her husband....."

7. Thus, the Income Tax Appellate Tribunal went by the statement of account produced by the assessee, from where it concluded that Rs.11,10,000/- was deposited in the assessee's account by way of transfer from S.B. Account NO. 100919. No doubt, if the assessee explained the source, namely, the amount so received was by way of loan from her husband, which was duly credited in her account, that may be the basis of deletion. However, we are of the opinion that the Income Tax Appellate Tribunal, instead of relying upon the aforesaid statement

for proper verification. This is more so when for the first time such a plea was taken before the CIT (A) and that too not initially but in the rejoinder. The assessee's case upto that stage was that the funds were generated from the sale of the property held by her in Sushant Lok-I, Gurgaon, which explanation was found to be palpably false. In these circumstances, before acting upon the aforesaid statement, the proper course would have been to refer the matter back to the Assessing Officer. We decide this question of law in favour of the Revenue and against the assessee and set aside the order of the Tribunal. The matter is accordingly remitted back to the Assessing Officer to conduct proper verification into the aforesaid plea of the assessee on the basis of the material produced before it and to find about the genuineness thereof before acting upon the same.

8. The other two questions relate to the additions made by the Assessing Officer which were in the sum of Rs.20,000/- and Rs. 2,00,000/- respectively. These amounts were deposited by the assessee in her bank account and her plea was that she had sold two cars for the aforesaid consideration and had deposited the amount in the bank account. The Income Tax Appellate Tribunal has recorded that Rs.20,000/- was received from the sale of one car and was deposited in the bank account and was duly shown in the regular return of the assessee for the assessment years 1996-97. From this transaction she

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of Rs.2 lakhs was shown to have been received from sale of another car and deposited in the bank account and the ITAT found that even this amount was disclosed in the regular return of income for the assessment year 1997-98 and the assessee had disclosed profit on sale of car at Rs.7374/-. This car was also disclosed in the regular return of income filed by the assessee and could not be subject matter of the block assessment period. No question of law arises in respect of these proposed questions.

9. The last question relates to the deletion by the ITAT of the addition of Rs.1,38,908/- made by the Assessing Officer. This addition was made, as according to the Assessing Officer, the assessee could not explain the source of this entry in the bank account. However, the following explanation was furnished by the assessee and accepted by the ITAT: -

> "20. Rival contention of both the parties have been considered and the materials on record have been perused. The various materials on record shows that the assessee had made an FD of Rs.90,000/- on 13.10.1993 aforesaid amount deposited in the FD was made out of the withdrawal from the assessee's bank account. Prior to date assessee had an FD of Rs.73,000/- made in 1992 which was increased to Rs.90,000/-. This FD of Rs.90,000/- had ultimate maturity value of Rs.1,38,908/-. The assessee has been regularly disclosing the interest income from FD's as would be clear from the return of income for the assessment years 1997-98 and 1996-97.
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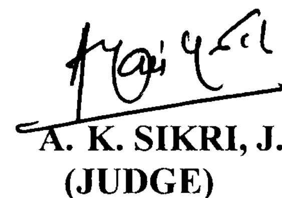
> 21. In the light of the facts above, it is clear that

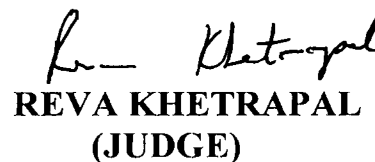
> fixed deposits having maturity value of Rs.1,38,098/- being accumulated out of the initial deposit of Rs.73,000/- made in 1992 which was made to Rs.90,000/- on 13.10.1993. We, therefore, delete this addition and direct the AO to modify the assessment order accordingly."

10. It is clear from the above that not only the assessee has been able to explain the source of the amount but she had even declared the interest income from the aforesaid fixed deposit receipts in her earlier assessment years as well. Therefore, no question of law arises.

11. The appeal is disposed of in the above terms.



A. K. SIKRI, J.
(JUDGE)



REVA KHETRAPAL
(JUDGE)

2nd August, 2010
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