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

+ **ITA 368/2009**

**HARESH BHAI ASHUMAL BHAI KESHWANI** ..... Appellant  
Through: Mr Piyush Kaushik

versus

**DEPUTY COMMISSIONER OF INCOME TAX** ..... Respondent  
Through: Mr Sanjeev Sabharwal

+ **ITA 369/2009**

**VIJAY KUMAR ASHUMAL KESHWANI** ..... Appellant  
Through: Mr Piyush Kaushik

versus

**DEPUTY COMMISSIONER OF INCOME TAX** ..... Respondent  
Through: Ms Sonia Mathur

**CORAM:**  
**HON'BLE MR. JUSTICE BADAR DURREZ AHMED**  
**HON'BLE MR. JUSTICE V.K. JAIN**

**ORDER**  
**19.04.2010**

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These appeals are being disposed of by a common order as they raise similar issues and also arise from the common order passed by the Income Tax Tribunal on 30.09.2008 in IT(SS)A No.209/Del/05 and IT(SS)(A)



No.210/Del/05 in respect of the block period which cover Assessment Year 1997-98 and 2003-04 (up to 23.10.2002). In ITA No.368/2009, additions have been made in respect of jewellery to the extent of Rs.2,73,301/- and in respect of the household goods to the extent of Rs.1,50,000/- on estimated basis. In ITA No.369/2009, the sole addition was made in respect of the household goods to the extent of Rs.1,85,700/-.

We have heard the learned counsel for the parties.

The learned counsel for the appellant/assessee contended that in respect of ITA No.368/2009, the jewellery, which has made the subject matter of the addition, was found in locker No.270 at UTI Bank, Baroda, whereas no search warrant was issued in respect thereof and, therefore, he has raised a jurisdictional point that the same cannot be relied upon for the purpose of making an addition. We find that there is no discussion on this aspect of the matter in the Tribunal's order that is impugned before us. The learned counsel for the appellant submitted that a specific plea was taken with regard to the jewellery found in the locker. However, the Tribunal has not considered the jurisdictional aspect which was the preliminary issue taken by the appellant. The learned counsel for the appellant also contended that certain evidence such as photographs and other documents, which had been filed by the



appellant before the Assessing Officer, have also not been considered by the authorities below on the merits of the matter.

Insofar as the household goods are concerned, the learned counsel for the appellant submits that the extent of the addition made in respect thereof is itself indicative that these are not substantial items and would be available in the household of any average businessman. The appellant also submitted that the regular assessment of the assessee in ITA No.368/2009 was to the extent of approximately Rs.18 lacs and, therefore, such items could very well have been purchased out of his regular income. This aspect of the matter was not considered by the Tribunal. He also submitted that there was no evidence to indicate that these items were acquired during the block period. The learned counsel for the appellant has drawn our attention to the CBDT Instruction No.1916 dated 11.05.1994 which also, according to him, was not considered by the Tribunal in the correct perspective. The learned counsel for the Revenue controverted all the submissions made by the learned counsel for the appellant/Revenue. Similar submissions were also made in ITA No. 369/2009 which pertains to only household goods.

Having considered the arguments advanced by the learned counsel for the parties, we are of the view that these appeals require re-consideration by the Tribunal. The re-consideration is particularly warranted because the



jurisdictional issue, with regard to jewellery in ITA No.368/2010, requires a finding to be given by the Tribunal before we can examine such an issue on merits. Insofar as the household goods are concerned, we find that the Tribunal should also examine as to whether these goods pertained to the block period or not and as to whether such goods could not have been acquired by the assesseees from their regularly assessed incomes. For these reasons, we set aside the impugned order to the extent of the findings with regard to the jewellery and household goods and remit the matter to the Tribunal for a consideration of the submissions made by the appellant afresh.

With these observations and directions, the appeals stand disposed of.

*Badar Durrez Ahmed*  
BADAR DURREZ AHMED, J

*V.K. Jain*  
V.K. JAIN, J

APRIL 19, 2010/bg