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

2.

+ ITA 1300/2010

COMMISSIONER OF
INCOME TAX

..... Appellant
Through: Mr. Abhishek Maratha with
Ms. Anshul Sharma, Advocates

versus

SMT. SEEMA TRIPATHI

..... Respondent
Through: Ms. Rani Kiyala, Advocate

AND

3.

+ ITA 1307/2010

COMMISSIONER OF
INCOME TAX

..... Appellant
Through: Mr. Abhishek Maratha with
Mr. Anshul Sharma, Advocates

versus

SMT. SEEMA TRIPATHI

..... Respondent
Through: Ms. Rani Kiyala, Advocate

AND

4.

+ ITA 1301/2010

COMMISSIONER OF
INCOME TAX

..... Appellant
Through: Mr. Abhishek Maratha with
Mr. Anshul Sharma, Advocates

versus

SHRI MITHILESH KUMAR
TRIPATHI

..... Respondent
Through: Ms. Rani Kiyala, Advocate

AND



5.
+ ITA 1306/2010

COMMISSIONER OF
INCOME TAX

..... Appellant
Through: Mr. Abhishek Maratha with
Mr. Anshul Sharma, Advocates

versus

SHRI MITHILESH KUMAR
TRIPATHI

..... Respondent
Through: Ms. Rani Kiyala, Advocate

% Date of Decision: 7th September, 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? No.
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

MANMOHAN, J:

CM No.15510/2010 in ITA 1300/2010
CM No.15517/2010 in ITA 1307/2010
CM No.15511/2010 in ITA 1301/2010
CM No.15515/2010 in ITA 1306/2010

Allowed, subject to all just exceptions.

Accordingly, applications stand disposed of.

ITA Nos. 1300/2010, 1307/2010, 1301/2010 & 1306/2010

1. The present appeals have been filed by the Income Tax Department under Section 260A of the Income Tax Act, 1961 (for brevity "Act, 1961") challenging the common order dated 7th October,



2009 of Income Tax Appellate Tribunal (in short "Tribunal") in No. 20/Agr./2008 for the Assessment Years 1999-2000 and 2000-2001

2. The relevant facts are that respondents-assesses showed long term losses on account of sale of jewellery in their original returns of income filed for Assessment Years under consideration. The jewellery was shown to be sold to M/s. SMS Surya Ornaments and M/s. Shree Ji Jewellers. The said jewellery were earlier declared by the assesseees under Voluntary Declaration of Income Scheme, 1997 (in short "VDIS"). A search under Section 132 of Act, 1961 was conducted at the residential premises of the assesses on 10th December, 2002. During the post search enquires, M/s. SMS Surya Ornaments and M/s. Shree Ji Jewellers were not found at their given addresses.

3. The Assessing Officer (in short, "AO") initiated proceedings under Section 147 of the Act, 1961 and a notice under Section 148 of the Act, 1961 was issued. The AO did not accept the explanation given by the respondents-assesses in reply to the abovesaid notice and held that the abovesaid concerns were sham identities created just to facilitate the respondents-assesses to introduce the undisclosed income in the garb of sale proceeds of jewellery. AO in the assessment order for the relevant assessment years made additions (of Rs.17,450,552/- in A.Y.1999-2000, Rs.65,24,953/- in A.Y. 2000-2001 in the case of Shri Mithilesh Kumar Tripathi and Rs.16,36,470/- in AY 1999-2000 and Rs.67,53,047/- in AY 2000-2001 in the case of Smt. Seema Tripathi w/o Sh. Mithilesh Kumar Tripathi) on account of bogus cash credits.



4. The respondents-assesses preferred an appeal before the Commissioner of Income Tax [in short, "CIT(A)"] against the assessment order. The CIT(A) allowed the appeals preferred by the respondents-assessees.

5. The appeals filed by the revenue were subsequently dismissed by the Tribunal. Hence, the present appeals.

6. Mr. Abhishek Maratha, learned counsel for revenue submitted that the Tribunal had erred in law in deleting the additions by holding that the sale of jewellery was not a sham transaction. Mr. Maratha further submitted that Tribunal had grossly erred in law in ignoring the findings of the Commissioner of Customs and Central Excise in the case of one Devi Das Garg that M/s. SMS Surya Ornaments and M/s. Shree Ji Jewellers were dummy entities created for the purpose of making accommodation entries.

7. Having heard the learned counsel for the appellant and having perused the file, we are of the view that the respondents-assessees have led sufficient evidence before the authorities below to establish the genuineness and existence of the two parties and transactions of sale of the jewellery.

8. In fact, the Tribunal in the impugned order has held as under:-

"9. Considering the above submissions, we find that the AO relying upon the findings of ld. Commissioner of Customs and Central Excise, Delhi relating to M/s. Shreeji Jewellers, to whom the assessee had claimed to have sold



the gold jewellery declared in VDIS, 1997, doubted the genuineness and existence of those two parties and the claimed transaction of purchasing of gold jewellery by them from the assesses and added the stated sale consideration in the income of the assesses. The assesses, on the other hand, produced all the necessary information about these transactions and above named parties supported with documents like their Permanent Account Numbers, bank accounts, their trade-tax assessment orders, sale vouchers issued by them against the claimed sales as well as their full addresses. The assesses had also produced the buyers' Income-tax returns for the relevant years in which the profits on sale of jewellery shown in respective returns were accepted by the department. The sale considerations were also paid by them to the assesses through account payee cheques. Thus in our view, the assesses had furnished all the necessary information supported with documents about the transactions and parties which could have been expected from a prudent seller to establish the genuineness of the claimed sales. Not only that, the proprietors of both the said concerns in response to summons u/s 131 issued to them by the AO in their reply to the AO had affirmed the claimed sale of gold jewellery by the assesses to them. It is also an undisputed fact that the assesses had paid tax, as directed by the department, while accepting their declaration made under VDIS, 1997. There is also substance in the submission of the assessee before the lower authorities that it was beyond their power and control to compel the proprietors of above named concerns to appear before the Assessing Officer in person in compliance of summons u/s 131 issued to them.

(emphasis supplied)

9. Further, we are of the view that the AO's reliance on the finding of Commissioner of Customs and Central Excise in the case of the third party without affording an opportunity to the respondents-assessees to rebut or contradict the findings, is a clear violation of the principles of natural justice. The Tribunal in this context has observed as under :-

10.The ld. DR has also not denied this arguments of the ld. AR in the present case before us that the assesses were not afforded opportunity to comment



upon/contradict the findings of the ld. Commissioner of Customs and Central Excise, Delhi that the above named two parties, M/s. Surya Ornaments and M/s. Shreeji Jewellers were not genuine by supplying this findings to the assessee before using the same adversely by the Assessing Officer against the assesses. It is obviously violation of basic principle of natural justice. Considering the totality of the above material facts and circumstances of the present case, we are of the view that the ld. CIT(A) has rightly deleted the additions in question made by the AO disbelieving the genuineness of the claimed sale of gold jewellery to the above named parties declared by the assesses under VDIS, 1997. The finding of the ld. CIT(A) in this regard is, thus, upheld.....”

10. From the above, it is apparent that the Tribunal has given cogent reasons for arriving at its factual conclusion. Moreover, in the present appeals, no substantial question of law arises. Accordingly, the present appeals being bereft of merit, are dismissed in *limine*.


MANMOHAN, J


CHIEF JUSTICE

SEPTEMBER 07, 2010

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