



43.

*IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.REV.P. 185/2010

Date of decision: 26th April, 2010

USHA GUPTA

..... Petitioner

Through Mr. Sandeep Sethi, Sr. Advocate with
Mr. Amit Bhagat & Mr. Pulkit Gupta,
Advocates.

versus

INCOME TAX OFFICER

..... Respondent

Through Nemo.

CORAM:**HON'BLE MR. JUSTICE SANJIV KHANNA****ORDER**% **26.04.2010****CRL.M.A. No. 5337/2010**

Exemption application is allowed, subject to all just exceptions.

CRL.REV.P. No. 185/2010

1. In the present case, there is no order in the income-tax proceedings giving a finding on merits in favour of the petitioner. By order dated 3rd January, 1995 relied upon by the counsel for the petitioner, the matter was remanded back to the Assessing Officer to go into the question of total quantum of addition, i.e., the valuation of shares which should not be less than Rs. 100/- per share. The said order passed by the Commissioner of Income-Tax dated 3rd January, 1995 cannot be construed as an order, which decides the controversy and the issue raised in the complaint on merits in favour of the petitioner. In the said order, the Commissioner of Income-Tax



while remanding the case back has observed as under:-

“Ground No. 2: The appellant has disputed the estimate of the sale price of each share of M/s Angora Wool Combers Pvt Ltd at Rs.139/- as against the sale price of Rs.100/- declared per share. It has been contended that the share price has been adopted at Rs.139/- without any evidence. It has been contended that the value of the share at Rs.139/- has been adopted on the basis of the order dt. 4.4.88 of CIT(A) in the case of P.P. Gupta, against which the appeal is pending before the Hon’ble(sic). The issue is yet to be redecided by the Assessing Officer and is pending before him. The Assessing Officer is directed to adopt the sale consideration as determined by him in the case of Shri J.C. Gupta for the assessment year 1981-82 which, however, in the instant case should not be less than Rs.100/- per share, the actual sale consideration admitted by the appellant and as agitated by him in its alternative ground in this regard.”

I would like to mention that this assessment has been completed after the aforesaid directions were issued by the CIT (Appeals)IX. However, the assessment has been completed without taking into consideration, the direction which were issued by the CIT (Appeals) in the case of Sri J.C. Gupta and Smt. Shanti Devi Gupta. The Assessing Officer should take a uniform decision in all the three cases.”

(emphasis supplied)

2. The allegation made in the complaint was that in a search and seizure conducted under the I.T.Act dated 21st, December 1983, some document, books of accounts and valuables were found, on the basis of which the authorities assessed the sale consideration of shares as Rs.46,00,000/-.



Besides the cheque amount received as sale consideration of shares, the accused also received cash amount and the shares were shown to be grossly underpriced. It was found that consideration for each share sold came out to be Rs.149.36 and not Rs.8/- per share as claimed by the accused. Later on 17th August, 2002, the accused in her letter to the I.T. Authorities had admitted that the sale of shares to be Rs.100/- per share.

2. Learned counsel for the petitioner submitted that after the said remand, assessment proceedings have not been completed and in view of Section 153(2A) of the Act, no assessment order can be passed because of limitation. This by itself does not merit discharge in the prosecution proceedings, which have been filed under Sections 276C and 277, i.e., willful attempt to evade income-tax and false verification or statements. The alleged technical default may be relevant for the assessment proceeding but does not result in a finding on merits in favour of the petitioner.

4. The petition is dismissed.

5. At this stage, learned counsel appearing for the petitioner states that the petitioner is a resident outside Delhi and has prosecution and remained pending for last two decades and she has not been granted exemption from personal appearance. It is open for the petitioner to apply before the learned trial court for exemption from personal appearance.

SANJIV KHANNA, J.

APRIL 26, 2010

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