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

\+ ITA 789/2010

JANARDHAN VERMA ..... Appellant
Through: Mr. Bharat Beriwal, Advocate.

versus

ASSISTANT COMMISSIONER
OF INCOME TAX ..... Respondent
Through: Ms. Suruchii Aggarwal, Advocate.

% Date of Decision: 05th July, 2010

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

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?

J U D G M E N T

MANMOHAN , J (Oral)

CM 11422-11423/2010 (exemption)

Allowed, subject to all just exceptions.

ITA 789/2010

1. Present appeal under Section 260A of the Income Tax Act, 1961, has been filed challenging the order dated 30th October, 2009 passed by the Income Tax Appellate Tribunal (in short 'Tribunal) relating to block assessment period 01st April, 1995 to 04th March, 2002.

2. Briefly stated the facts of the present case are that on 04th March,

2002, a search and seizure operation was conducted at the appellant a son's premises. Jewellery weighing 1737.5 gms valued at Rs.7,81,875/- was found during the search and seizure operation.

3. Mr. Bharat Beriwal, learned counsel for appellant contended that the Tribunal committed a grave error in reversing the findings of the Commissioner, Income Tax without giving any reason especially when the Tribunal had only considered 15 slips while 41 slips had been found and serially numbered during the search and seizure operation.

4. The Tribunal in its impugned order has held that though the Commissioner had not accepted the appellant's additional evidence, yet it had accepted appellant's submission that 41 persons had pledged jewellery with the appellant. The Tribunal has further found upon perusal of the evidence that no documentary proof was found at the time of search to show pledging of jewellery by 41 persons. The Tribunal has further opined that the statement given by 4 persons in favour of the appellant is not supported by any evidence. Moreover, the affidavits of the persons who had supported the appellant's version were prepared in December, 2002 and March, 2004 and yet the same had not been filed before the Assessing Officer.

5. The Tribunal has also held that the appellant's contention that some of the slips were not seized by the search party was not substantiated by evidence.

6. Keeping in view the aforesaid order of the Tribunal, we are of the opinion that the Tribunal has given cogent reasons for its conclusion and that the appellant has, in the present proceedings essentially challenged findings of fact. The Supreme Court and this Court have repeatedly held that a question of fact becomes a question of law, if the finding is either without any evidence or material, or if the finding is contrary to the evidence, or is perverse or there is no direct nexus between conclusion of fact and the primary fact upon which that conclusion is based. But, it is not possible to turn a mere question of fact into question of law by seeking whether as a matter of law the authority came to a correct conclusion upon a matter of fact. Consequently, no substantial question of law arises in the present proceedings. Accordingly, the present appeal and pending application being devoid of merits are dismissed but with no orders as to costs.

MANMOHAN, J

CHIEF JUSTICE

JULY 05, 2010
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