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

14.

+ ITA 1191/2010

COMMISSIONER OF INCOME TAX

Through:

..... Appellant

Ms. Sonia Mathur,
Advocate

versus

MAHESH KUMAR

Through:

..... Respondent

None

AND

+ ITA 1192/2010

15.

COMMISSIONER OF INCOME TAX

Through:

..... Appellant

Ms. Sonia Mathur,
Advocate

versus

MAHESH KUMAR

Through:

..... Respondent

None

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Date of Decision: 20th August, 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?
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

MANMOHAN, J:**CM 14504/2010 IN ITA 1191/2010**

Allowed, subject to all just exceptions.

ITAs 1191/2010, 1192/2010

1. The present two appeals have been filed under Section 260A of Income Tax Act, 1961 (for brevity "Act, 1961") challenging the order



dated 25th June, 2009 passed by the Income Tax Appellate Tribunal, in short “Tribunal”) in ITA Nos. 1785/Del/2008 and 1042/Del/2008, for the Assessment Year 2004-2005.

2. It is pertinent to mention that by the impugned order, the appeal of the assessee was allowed whereas cross-appeal of the revenue was dismissed. Since both the appeals have been decided by a common judgment, the present appeals are also being disposed of by a common order.

3. The relevant facts of the present case are that the respondent-assessee had purchased two properties bearing Plot Nos. 218 and 219 in Block B, Sector 8, Bagdolla residential Scheme, Dwarka, Delhi for ₹ 2,00,000/- and ₹ 3,00,000/- respectively.

4. On 7th October, 2004, a search operation was conducted on the respondent-assessee's premises. No incriminating document or material was found or seized during the search operation in respect of aforesaid two plots purchased by the respondent-assessee. However, the Assessing Officer referred these two plots for valuation under Section 142A of the Act, 1961.

5. On the basis of the valuation report submitted by the District Valuation Officer (in short “DVO”), the Assessing Officer made an addition of ₹ 19,48,200/- in respondent-assessee's income. Upon an appeal being filed by the respondent-assessee, the Commissioner of Income Tax (Appeals) reduced the addition of ₹ 7,34,460/-.

6. Upon appeals being filed by the respondent-assessee as well as



by the revenue, the Tribunal deleted the entire addition made by Assessing Officer on the basis of the valuation report submitted by the DVO. In fact, the Tribunal in its impugned order has held as under :-

“6. After hearing both the sides at length, we are of the view that during the search operation, no material in respect of the investment in the plots referred to Valuation Officer was found and seized. There was no evidence gathered during the search operation that assessee has invested more than the value declared in the registered sale deed. The comparable instances taken by the Valuation Officer were situated far away from the location of these plots. These plots are located in Sector-8 of Dwarka and were also having not only locational disadvantage but also the development of that area was not as well developed as the comparable instances taken by the Valuation Officer for the property situated in Janak Puri and Vikas Puri, New Delhi. There was also disadvantage in respect of noise and disturbances which the Valuation Officer himself has noted that the properties are situated near the airport and railway track.....”

7. Ms. Sonia Mathur, learned counsel for the revenue submitted that the Tribunal was not justified in deleting the addition of ₹ 19,48,200/- under Section 69 of the Act, 1961 on account of unexplained investment made by the respondent-assessee with respect to purchase of two plots at Dwarka. She further submitted that the Tribunal had erred in law in holding that the reference made to the Valuation Officer under Section 142A of the Act, 1961 was not justified.

8. It is settled law that the primary burden of proof to prove under-statement or concealment of income is on the revenue and it is only when such burden is discharged that it would be permissible to rely upon the valuation given by the DVO. (See **K.P. Varghese Vs. ITO**, 131 ITR 597, **CIT Vs. Shakuntala Devi**, (2009) 316 ITR 46 and ITA



No. 482/2010 decided by this Court on 5th May, 2010).

9. Further the Supreme Court in its order dated 16th February, 2010

in Civil Appeal No. 9468/2003 has held as under:-

“Having examined the record, we find that in this case, the Department sought reopening of the assessment based on the opinion given by the District Valuation Officer (DVO). Opinion of the DVO per se is not an information for the purposes of reopening assessment under Section 147 of the Income Tax Act, 1961. The AO has to apply his mind to the information, if any, collected and must form a belief thereon. In the circumstances, there is no merit in the Civil Appeal. The Department was not entitled to reopen the assessment.

Civil appeal is, accordingly, dismissed. No order as to costs.

10. Moreover, in the present case, no evidence much less incriminating evidence was found as a result of the search to suggest that the assessee had made any payment over and above the consideration mentioned in the registered sale deeds. In any event, the final fact finding authority, namely, the Tribunal has arrived at a finding that the instances of the sale taken into account by the Valuation Officer were not comparable as they were situated far away from the location of the plots purchased by the respondent-assessee. Consequently, we find that no substantial question of law arises in these two appeals which, bereft of merit, are dismissed in *limine*.

MANMOHAN, J

CHIEF JUSTICE

AUGUST 20, 2010/rn