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

+ ITA 1329/2010

COMMISSIONER OF INCOME TAX Appellant
Through: Mrs. Prem Lata Bansal, Advocate

versus

VATIKA TOWNSHIP PVT. LTD. Respondent
Through: Mr. Prakash Kumar, Advocate.

% Date of Decision: 10th 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:

1. The present appeal has been filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "Act") challenging the order dated 24th July, 2009 passed by the Income Tax Appellate Tribunal (in short "Tribunal") in IT(SS)A Nos. 395/Del/2003 and 509/Del/2003 for the Block Period 01st April, 1989 to 10th February, 2000.

2. Mrs. Prem Lata Bansal, learned counsel for the Revenue submitted that the Tribunal had erred in law in deleting the addition of ₹ 81,39,919/- and ₹ 3,38,000/- made by the Assessing Officer (in short, "AO") on account of unexplained expenditure on construction of



farmhouse and flat on the basis of seized material. Mrs. Bansal further submitted that the Tribunal had erred in law in holding that the entries recorded in the seized materials were mere projections.

3. Having heard the learned counsel for the revenue and having perused the appeal papers, we are of the view that the issue raised in the present appeal is essentially a question of fact. The final fact finding authority namely, the Tribunal has given cogent reasons for arriving at its factual conclusion. The relevant observations of the Tribunal are reproduced hereinbelow:-

“8. The issue which require adjudication at our end is whether the notings on different pages of annexure A-12 in fact demonstrate the incurrence of expenses by the assessee out of books. The contention of the assessee in brief was whatever has actually been incurred by it that has been debited in the books of accounts. In this computerized sheet only projected figures are available which are to be forwarded to Shri Chandan Basu the alleged de-facto owner of the flat as well as the farmhouse. With the assistance of Ld. Representative, we have specifically gone through these documents in the light of the finding recorded by the CIT(A). In our opinion the document has to be read as a whole by giving simple meaning to the narration recorded in the document. On a plain reading of the entries recorded in this document nowhere suggest that assessee has actually incurred the expenses amount to Rs.1,35,87,866/- on the construction of the farmhouse and Rs.42,86,880/-. Thus in our opinion, Ld. First Appellate Authority has appreciated the facts and circumstances emerging out from this document in right perspective. Wherever against any entry expression “paid” is written, Ld. CIT(A) construed that expenses must have actually been incurred. But wherever it is just an amount is mentioned, Ld. First Appellate Authority took it as expenses upto the date of search these have been shown in the books. It was constructing the building on behalf of the third concern. There can be no motive to conceal the cost of construction because cost of construction had not to be incurred from its own account. It is Shri Chandan



Basu who has to bear the cost of construction. ON the basis this statement stand of the assessee could be that Rs.81 lacs was to come from Shri Chandan Basu and the assessee was to spent Rs.178.75 i.e. Rs.1,35,87,866/- on the farmhouse and Rs.42,86,880/- on the flat. The AO except this alleged projected statement of account failed to bring any other evidence exhibiting the circumstance the circumstance that assessee had actually incurred the expenses. Thus after going through the order of Ld. CIT(A) we do not find any reason to interfere in it because Ld. First Appellate Authority has taken into cognizance, the notings found in the paper in right perspective.”

4. Consequently, the present appeal being bereft of merit, is dismissed *in limine*.

MANMOHAN, J

CHIEF JUSTICE

SEPTEMBER 10, 2010

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