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

ITA 947/2009

SHIRI ASHOK LALWANI Appellant
Through: Mr. K.R. Manjani, Advocate

versus

INCOME TAX OFFICER Respondent
Through: Mr. Sanjeev Sabharwal, Advocate

% DATE OF DECISION: September 16, 2010

CORAM:

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

A.K. SIKRI, J. (ORAL)

1. Admit.
2. Following substantial question of law arises for consideration:-

“Whether on the facts and circumstances of the case, could it be said that proper opportunity was given in the face of not giving the copy of the statements and documents of Shri Pawan Sarin and his cross-examination inspite of request of the appellant for cross examination and supplying the



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3. With the consent of the parties, we have heard the matter finally.
4. The appellant had filed return of income for the year ending 31st March, 1998, i.e., Assessment year 1998-99 showing income of ₹ 2,44,030/-. In this year, he had income from dealing in real estate. According to him, he used to purchase properties, develop the same and sell the same as flats. His further case is that for development and construction, the assessee/appellant had engaged one Shri Pawan Sarin who had worked for the assessee and amount of ₹ 3,34,203/- was due against his bills.
5. In order to verify the veracity of the aforesaid stand taken by the assessee, namely, that Shri Pawan Sarin had worked for him and an amount of ₹ 3,34,203/- was payable to Shri Sarin, the assessing officer summoned Shri Sarin and recorded his statement. In his statement, Shri Sarin stated that he had not worked for the appellant. The assessee was confronted with the aforesaid statement. In response, the assessee filed a copy of the order passed in the suit filed by Shri Pawan Sarin, as per which Shri Pawan Sarin had worked for the assessee. The assessee also placed on record documents, which included agreement for construction entered into by the assessee with Shri Pawan Sarin. The assessee, in these circumstances, took the plea before the assessing officer that the statement made by Shri Sarin was incorrect. He also requested vide letter dated 12.03.2001 to produce Shri Sarin as his statement was



06.01.2003 and 11.02.2003. However, the assessing officer, without acceding to the aforesaid request or even supplying the copy of the statement of Shri Sarin, added the amount of ₹ 3,34,203/- in the income of the assessee and taxed the same. The CIT(A) as well as ITAT have dismissed the appeals of the assessee. Against these orders, present appeal is filed.

6. In view of the aforesaid backdrop, following order was passed on 22nd April, 2010:-

“Mr. Sabharwal, who appears on behalf of the respondent, shall produce the record of the assessment proceedings so that the circumstances with regard to the recording of the statement of Mr. Pawan Sareen can be ascertained. According to Mr. Manjani, who appears for the appellant, the statement of Mr. Pawan Sareen was recorded behind the back of the assessee and no opportunity to cross-examine the said Mr. Pawan Sareen was accorded to the assessee although a request was made to this effect. This fact can only be ascertained from the record.

The record be produced in the Court on the next date of hearing.

List on 16.09.2010.”

7. In compliance with the aforesaid direction, Mr. Sanjeev Sabharwal, learned counsel for the Department has produced the original records, which we have perused. We find that the averments of the assessee are correct to the effect that statement of Shri Pawan Sarin was recorded behind the back of the assessee; it was not supplied to the assessee; specific requests were made by the assessee for production of



8. In view thereof, we are of the opinion that the order of the assessing authority adding the amount of ₹ 5,34,203/- which was shown as the amount due by the assessee to Shri Sarin was not proper and the aforesaid aspects highlighted by us have not been duly considered and appreciated by the Tribunal as well.

9. The question is thus answered in favour of the assessee and orders of the authorities below are hereby quashed. Matter is remitted back to the assessing officer to make fresh assessment limited to the aforesaid issue after providing due opportunity to the assessee as indicated above.


A.K. SIKRI, J.


REVA KHETRAPAL, J.

SEPTEMBER 16, 2010

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