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

+ W.P.(C) 7336/2008

MADHU LALWANI ..... Petitioner  
Through Mr. Piyush Kaushik, Advocate.

versus

COMMISSIONER OF INCOME TAX DELHI ..... Respondent  
Through Mr. Sanjeev Sabharwal, Advocate.

**CORAM:**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE SANJIV KHANNA**

% **ORDER**  
**13.01.2011**

**CM No. 372/2011**

This is an application for restoration of the Writ Petition (Civil) No. 7336/2008. Mr. Sanjeev Sabharwal, learned counsel for the Revenue Department has no objection.

In view of the aforesaid, the application stands allowed and the writ petition is directed to be restored to file in its original number.

The application is accordingly disposed of.

**W.P.(C) No. 7336/2008**

As we have restored the matter, we have taken up the writ petition for hearing.



2. Heard Mr. Piyush Kaushik, learned counsel for the petitioner  
Mr. Sanjeev Sabharwal, learned counsel for the Revenue Department.
3. On 19<sup>th</sup> August, 1993, the Income Tax Department conducted search and seizure operation under Section 132 of the Income Tax Act, 1961 (Act for short) at the residential premises of Ms. Madhu Lalwani, the petitioner and seized cash and jewellery aggregating to Rs.2,07,887/-.
4. On 16<sup>th</sup> December, 1993, the Assistant Commissioner of Income Tax passed an order under Section 132(5) of the Act treating jewellery worth Rs.1,81,614/- as prima facie unexplained and taxable in the financial year ending 31<sup>st</sup> March, 1994. With regard to the cash of Rs.1,11,300/-, it was held that the same was unexplained. However, this was without prejudice that the cash could be assessed in the hands of another person. Cash of Rs.1,11,300/- was treated as unexplained in the hands of the petitioner on protective basis. It was accordingly directed that the seized assets worth Rs.2,07,887/- should not be released till assessments order was finalized. It may be noted that no third person had/has challenged or claimed any right to the jewellery.
5. The petitioner filed return for the year ending 31<sup>st</sup> March, 1994 on 31<sup>st</sup> March, 1995, declaring a total income of Rs.2,75,340/-. After scrutiny, the Deputy Commissioner of Income Tax passed an assessment



order under Section 143(3) of the Act assessing her total income Rs.4,56,950/- after making a singular addition of Rs.1,81,614/- on account of unexplained investment in jewellery, under Section 69A of the Act. The said addition was not on protective basis. The assessment order does not relate to and deal with cash of Rs. 1,11,300/-. We are not concerned with the cash of Rs. 1,11,300/-.

6. The petitioner filed an appeal and vide order dated 24<sup>th</sup> March, 1999, addition under Section 69A of the Act on account of unexplained jewellery was reduced to Rs.56,614/-.

7. On further appeal, the Income Tax Appellate Tribunal deleted the entire addition under Section 69A of the Act vide order dated 19<sup>th</sup> May, 2003. The said order has attained finality.

8. Petitioner accordingly approached Commissioner of Income Tax, Delhi (Central)-III vide her application dated 22-23<sup>rd</sup> April, 2008 for return of jewellery. She also made a prayer for refund of Rs. 91,306/- which was deposited towards taxes vide two challans after the assessment order making addition of Rs. 1,81,614/- was passed. The request has been rejected and denied vide order dated 21-23<sup>rd</sup> May, 2008, which reads as under:-

“2. Your request for release of Jewellery made in letter dated 14.01.2008 has been considered. After



hearing your Authorized Representative and considering his letters dated 22<sup>nd</sup> April 2008 filed on 23.04.2008 and 23<sup>rd</sup> April, 2008 filed on 28.04.2008 your request for release of jewellery, seized during search & seizure operation on 19.09.93 in the Prince Gutka group, is hereby rejected. The said jewellery has been held to belong to the family and not just the present assessee alone. Since the appeals in other cases are still pending for decision, the said jewellery cannot be released presently.”

9. The aforesaid order does not deal with the question of refund of Rs.91,306/-. In the counter affidavit it is submitted that no such refund is pending in the case of the petitioner. However, when and how the amount was adjusted is not stated. It is not denied in the counter affidavit that the said payments were made by the challans concerned. The respondent has not filed any computation chart to show and establish that the refund has been adjusted. It is therefore, appropriate and necessary that the respondent should examine the case of refund of Rs.91,306/- deposited/paid by the petitioner and pass a speaking order. In case any amount is refundable, the same shall be refunded and paid to the petitioner in accordance with law.

10. Even with regard to jewellery, it is noticed that in the order under Section 132(5) of the Act dated 16<sup>th</sup> December, 1993, the jewellery has been treated as unexplained investment of the petitioner. In the



assessment order passed on 31<sup>st</sup> December, 1998 under section 143( ,  
the Act, addition of Rs.1,81,614/- was made on account of the jewellery.  
Protective assessment was not made. The respondent has not placed on  
record any order or document to show that the jewellery seized was  
treated as jewellery belonging to a third person. On the other hand, the  
Commissioner of Income Tax (Appeals) had reduced the addition on  
account of unexplained jewellery/investment to Rs.56,614/- but the  
Tribunal deleted the entire addition on the ground that the jewellery  
belongs to the petitioner, though it may have been gifted to her on various  
occasions. The Tribunal has relied upon the affidavit of the petitioner's  
brother that the jewellery was given at the time of marriage by the mother  
of the petitioner.

11. Learned counsel for the Revenue submitted that in case jewellery is  
returned to the petitioner, family members of the petitioner may make a  
claim on the said jewellery. Learned counsel for the petitioner, on the  
other hand, has submitted that he is ready and willing to furnish 'no  
objection certificate' from the family members and indemnity bond to the  
authorities to the satisfaction of the Income Tax authorities. In these  
circumstances, the impugned order dated 21-23<sup>rd</sup> May, 2008 passed by the  
Commissioner of Income Tax, Delhi (Central)-III is set aside and quashed



and the matter is remanded to the concerned Commissioner to pass a order on both return of jewellery as well as refund of Rs.91,306/-. The petitioner or her representative will appear before the Commissioner of Income Tax, Delhi (Central)-III on 28<sup>th</sup> February, 2011 at 3 pm. Commissioner of Income Tax will fix a date for hearing the petitioner or her representative and pass a speaking order on or before 31<sup>st</sup> March, 2011. Refund, if due, will be paid within 15 days thereafter along with interest, if payable, in accordance with the provisions of the Act. The writ petition is accordingly disposed of. No order as to costs.

**SANJIV KHANNA, J.**

**CHIEF JUSTICE**

**JANUARY 13, 2011**  
**VKR/NA**