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

+ REV. PET. 366/2012 IN ITA 156/2009 & C.M. APPL. 10542-10544/2012

THE COMMISSIONER OF INCOME TAX, DELHI Appellant
Through: Ms. Suruchi Aggarwal, Sr. Standing
Counsel.

versus

SMT. RENU GUPTA Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.V.EASWAR

ORDER

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29.11.2012

Office note records that the notice was served on the assessee/ respondent for 05.11.2012. There is, however, no representation on behalf of the assessee.

2. The Revenue argues that the order dismissing the appeal should be recalled especially in view of the judgment of this Court in *CIT v. Geeta Devi Bindal*, ITA No.126/2009 and connected cases. It is urged that the Tribunal entirely based its conclusions in the present case on the Special Bench ruling in *Bishan Chand Mukesh Kumar* and in an identical fact situation the Court (in *Geeta Devi Bindal*) remitted the matter for consideration on the facts and circumstances of each case.

3. Having regard to the averments made and the directions in *Geeta Devi Bindal*, this Court is of the opinion that the review has merit; it is accordingly allowed.



ITA 156/2009

1. The Revenue claims to be aggrieved by the order of the Income Tax Appellate Tribunal dated 29.08.2008. It had challenged the Commissioner (A)'s order deleting the amount added back on account of accommodation entries allegedly provided by M/s. Bishan Chand Mukesh Kumar, the assessee had cross objected to the CIT (Appeals) in upholding the reassessment. Para 4 of the impugned order in this case records that counsel for both sides agreed that the decision of the Special Bench in M/s. Bishan Chand Mukesh Kumar (IT) (SS) A. No.33/Del/2006 and IT (SS) A. No.35/Delhi/2006 decided on 25.07.2008 would apply. The Tribunal also heard the submissions and quoted paras 166 of the decision in *Bishan Chand Mukesh Kumar*; on that basis the revenue's appeal was dismissed.

2. In *Geeta Devi Bindal*, too the question of genuineness of jewellery sales claimed by the assessee in circumstances identical to the present one to either M/s. Bishan Chand Mukesh Kumar or Bemco Jewellers was in issue. On being called upon to decide the correctness of the ITAT orders, the Division Bench in *Geeta Devi Bindal* held as follows: -

“Since the Tribunal has not done that, we are setting aside the impugned orders and are remitting the matters to the Tribunal for considering this aspect of the matter so that the Tribunal can return a clear finding in respect of each of the matters as to whether the alleged transaction of sale of jewellery was genuine or not.”

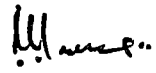
3. In view of the above decision, this Court is of the opinion that a similar approach had to be made. Having regard to the facts of this case the impugned order does not disclose even a discussion of the facts pertaining to the transaction involved in the present case of the assessee / respondent. In view of this



development the Court is of the opinion that the revenue's appeal is to succeed. The same is accordingly allowed. The ITA No.2053/Del/07 and CO 249/Del/07 are accordingly restored to the file of the Tribunal which shall issue notice to the parties fixing the date for hearing.

4. Consequently, all the miscellaneous applications stand disposed of. ITA No.156/2009 is allowed in the above terms.


S. RAVINDRA BHAT, J


R.V.EASWAR, J

NOVEMBER 29, 2012

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