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

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\+ **ITA 656/2015**

PR. COMMISSIONER OF INCOME TAX-15 ..... Appellant
Through: Ms Suruchi Aggarwal, Ms Lakshmi Gurung and Mr Abhishek Sharma, Advocates.

versus

SHRI PREM PRAKASH GARG ..... Respondent

And

5.
\+ **ITA 657/2015**

PR. COMMISSIONER OF INCOME TAX-15 ..... Appellant
Through: Ms Suruchi Aggarwal, Ms Lakshmi Gurung and Mr Abhishek Sharma, Advocates.

versus

SHRI PREM PRAKASH GARG ..... Respondent

CORAM:
HON'BLE DR. JUSTICE S.MURALIDHAR
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% 02.09.2015

1. These appeals are directed against the common impugned order dated 30th January, 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos. 4527/Del/2009 and 4551/Del/2009 for the AYs 2004-05.

2. The background facts are that on the basis of the specific information that one Mr Sanjay Kumar Garg was providing entries of sales and purchases had floated various entities showing different persons as proprietors, the assessments of the said Mr Sanjay Kumar Garg were sought to be reopened. During the course of a survey conducted on the business premises of Mr Sanjay Kumar Garg on 12th July 2004 he, *inter alia*, made a statement admitting to using the said concerns and their bank accounts for depositing cash and cheques. He admitted that he was having their complete blank, signed cheque books. Among the proprietary concerns mentioned by him was one M/s. Baba Kishore Enterprises of which the Respondent Assessee was shown as the Proprietor.

3. On the basis of the above statements of Mr Sanjay Kumar Garg, the assessments of the Respondent for the aforementioned AYs were sought to be reopened by issuing notices under Section 148 of the Act. By an order dated 24th December, 2007, the assessment was finalised by the AO, *inter alia*, directing an addition of Rs.15,85,60,000/- to be made on substantive basis in the hands of Mr Sanjay Kumar Garg "being the actual account

operator in the back ground" and on protective basis in the hands of the Assessee.

4. The CIT (A) by an order dated 24th September, 2009, upheld the above addition substantively in the hands of Mr Sanjay Kumar Garg and protectively in the hands of the Respondent Assessee.

5. While the appeals of the Assessee in the ITAT were pending, the ITAT by an order dated 28th January 2010 in ITA Nos. 1501, 1502, 3531 to 3534/Del/2009 (being the appeals by Mr Sanjay Kumar Garg) annulled the reassessments of Mr Sanjay Kumar Garg for the years 2001-02 to 2004-05 on the technical ground that they were barred by limitation. The said order of the ITAT dated 28th January 2010, in the case of Mr Sanjay Kumar Garg has been upheld by this Court an order passed today in ITA Nos. 92, 93, 94 and 96 of 2012.

6. With the addition on substantive basis in the hands of Mr Sanjay Kumar Garg having been annulled, the question of the same addition on protective basis in the hands of the Respondent Assessee for the AY 2004-05 does not arise. The specific case of the Department is that the money from the account of the Assessee actually belongs to Mr Sanjay Kumar Garg and who

was only using the account of the Respondent Assessee.

7. Consequently, as far as the present appeals pertaining to AY 2004-05 are concerned, the Court is of the view that in view of the above development no substantial question of law arises. The appeals are, accordingly, dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

SEPTEMBER 02, 2015
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