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

+ ITA 1302/2010

COMMISSIONER OF  
INCOME TAX

..... Appellant  
Through: Mr. Abhishek Maratha, Advocate

versus

DEVI DAS GARG

..... Respondent  
Through: None

% Date of Decision: 07<sup>th</sup> 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:**

**CM No. 15512/2010 (exemption)**

Allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

**ITA 1302/2010**

1. The present appeal by the Income Tax Department has been filed under Section 260A of the Income Tax Act, 1961 (for brevity "Act, 1961") challenging the order dated 14<sup>th</sup> October, 2009 of Income Tax Appellate Tribunal (in short "Tribunal") in ITSSA No. 4/Agr/2008 for the Block Assessment Period 1<sup>st</sup> April, 1996 to 10<sup>th</sup> December, 2002.



2. The relevant facts of the present case are that a search and seizure under Section 132(1) of Act, 1961 was carried out at the residential premises of the respondent-assessee at 1893, Dampier Nagar, Mathura and D-1/2, Model Town, Phase-III, Delhi and a seizure of ₹ 12,99,000/- was made from the Delhi premises. Respondent-assessee in reply to the notice u/s. 143(2) stated that the said cash was the share application money which belonged to M/s. West Deal properties Pvt. Ltd. of which he was the director on the day of search. AO did not accept the explanation given by the respondent-assessee and made an addition of ₹13,00,000/- on account of undisclosed income in the assessment order for the Block period. The Commissioner of Income Tax (Appeals) [in short "CIT(A)"] allowed the appeal of the respondent-assessee and deleted the said addition made by the AO. Revenue preferred an appeal against CIT(A) which was dismissed by the Tribunal. Hence the present appeal.

3. Mr. Abhishek Maratha, learned counsel for the revenue submitted that Tribunal had erred in law in upholding the CIT(A)'s order of deletion of addition made by the AO ignoring the fact that M/s. Raj Kattha Products Pvt. Ltd. who claims to have given share application money of ₹ 13,00,000/- was one of the main companies of the Raj Darbar Group, to which the respondent-assessee belongs and the respondent-assessee was the Director of the company, that is, M/s. West Deal Properties Pvt. Ltd. whose shares were claimed to have been



purchased at the time of the search. He submitted that the cash entered the account dated 23<sup>rd</sup> November, 2009 of the cash transition is only accommodative in nature to explain the availability of cash found at the time of search.

4. Having heard learned counsel for the revenue and having perused the file, we are in agreement with the view of the CIT(A) which has been subsequently upheld by the Tribunal that the respondent-assessee has duly filed all requisite evidences as regards the amount of ₹13,00,000/- given by M/s. Raj Kattha Products (P) Ltd. as share application money to M/s. West Deal Properties (P) Ltd.

5. It is pertinent to mention that the assessment order of M/s. Raj Kattha Products (P) Ltd. for the assessment year 2003-2004 under Section 143(2) of the Act, 1961, wherein the said sale of shares was accepted, was made by the same A.O.

6. We also believe that A.O.'s change of opinion regarding the said transaction cannot be justified in absence of emergence of any new incriminating evidence. In fact, the Tribunal in its order has observed as under:-

*“4. We have heard the rival contentions and perused the facts of the case. The Ld. CIT(A) vide letter dated 20.11.2006 has asked for the remand report and even after reminders, the same remained uncomplished and the Ld. CIT(A) has proceeded to decide the issue on merits. The assessee has filed all the evidences of availability of cash with M/s. Raj Kattha Products (P) Ltd. which is assessed u/s 143(2) for the assessment*



*2003-2004 with the same AO. Therefore, share application money given by M/s. Raj Kattha Products (P) Ltd. to M/s. West Deal Properties Pvt. Ltd. cannot be doubted. No defect has been pointed out in the explanation given by the assessee. Therefore, in such circumstances and facts of the case, we find no infirmity in the order of the ld. CIT(A) who has rightly deleted the addition made by the AO. Thus Ground No.1 to 3 of the Revenue are dismissed.”*

7. Accordingly, the present appeal, being bereft of merit, is dismissed *in limine*.

**MANMOHAN, J**

**CHIEF JUSTICE**

**SEPTEMBER 07, 2010**

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