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

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ITA 423/2015

PR. COMMISSIONER OF INCOME TAX Appellant

Through: Ms Suruchi Aggarwal, Senior Standing
Counsel with Ms Lakshmi Gurung, Junior
Standing Counsel.

versus

HARI SHANKAR KHEMKA Respondent

Through

AND

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ITA 472/2015

PR. COMMISSIONER OF INCOME Appellant

Through: Ms Suruchi Aggarwal, Senior Standing
Counsel with Ms Lakshmi Gurung, Junior
Standing Counsel.

versus

HARI SHANKAR KHEMKA Respondent

Through

CORAM:

HON'BLE DR. JUSTICE S.MURALIDHAR

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **24.08.2015**

1. The present appeals filed by the Revenue against the common order dated



2nd December, 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos.4044-45/Del/2015 for the Assessment Years ('AY') 2001-02 and 2002-03.

2. A search action was conducted on 15th December, 2004 under Section 132 of the Act in the case of Mr Brij Mohan Gupta, Gali Hing Beg, Tilak Bazar, Delhi. As a result of the search, documents having a bearing on the Assessee Respondent, who was engaged in cloth business at the Cloth Market, Old Delhi, as well as certain others, were seized by the Investigation Wing. Proceedings under Section 147 of the Act were initiated against the Respondent as a result thereof. It culminated in an assessment order being passed on 26th December 2008 under Section 143(3)/254 of the Act determining his total income at Rs 29,63,660/- as against Rs.1,63,656/- originally declared for AY 2001-02. Likewise, for AY 2002-03, the total income was increased to Rs.42,66,610/- as against Rs 1,66,610/- declared originally.

3. Against the deletion by the CIT (A) of the said additions, the Revenue file an appeal before the ITAT. By an order dated 16th November, 2011 in ITA



No. 175 & 176/Del/2010, the ITAT restored the matter to the file of the AO for fresh adjudication. On remand, the AO framed fresh assessment orders on 19th March, 2013 making additions of Rs.28 lakhs in AY 2001-02 and Rs.41 lakhs in AY 2002-03. These additions were confirmed by the CIT (A). Thereafter, the Respondent file an appeal before the ITAT.

4. The ITAT noted that during the course of search operation loose papers/diaries were found and seized. In some papers full details of the parties were mentioned, whereas in some other papers the details were mentioned in coded form. These coded entries were stated to have been written by one Mr Ram Avtar Singhal, who was an Accountant of the group of Mr Brij Mohan Gupta that was engaged in *hundi* business. It is also revealed that Mr Rajiv Gupta who is son of Mr Brij Mohan Gupta was also actively involved in the unaccounted cash loan and *hundi* transactions. In the remand proceedings, the AO provided the Respondent, *inter alia*, with the statements of Mr Ram Avtar Singhal, Mr Rajiv Gupta and Mr Brij Mohan Gupta.

5. In its order dated 16th November, 2011, the ITAT had issued a direction



that the Assessee should be given an opportunity of cross-examining the persons on the basis of whose statement the additions were made. The ITAT now found that no such opportunity for cross-examination had in fact been provided to the Assessee even in the remand proceedings. Secondly, in the statements furnished to the Assessee it was found as a matter of fact that there was nothing which implicated the Assessee. As noted by the ITAT, “the only nexus as emanating from the said statement is restricted to an oblique reference to one Hari Sanker Khemka, Narayana, in the statement of Shri Ram Avtar, Accountant of BM group. There is nothing to establish that the said person is the Assessee, who during the assessment proceedings have denied that he is not the person referred by Ram Avtar Gupta. Admittedly, the Assessee is not from Narayana but from Cloth Market, Delhi.” The above factual conclusions by the ITAT have not been shown to be perverse by the Revenue by producing any further material on record. The decisions having turned on facts, the Court finds no substantial question of law arises for consideration. The appeals are, accordingly, dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

AUGUST 24, 2015/MK