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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****34**

+ ITA 57/2010

COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Prem Lata Bansal, Advocate

versus

KANCHAN BHALLA Respondent
Through: Mr. Salil Aggarwal, Advocate

AND**35**

+ ITA 62/2010

COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Prem Lata Bansal, Advocate

versus

GAUTAM BHALLA Respondent
Through: Mr. Salil Aggarwal, Advocate

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Date of Decision: 15th July, 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 (Oral)

CM 469/2010 in ITA 62/2010

Allowed, subject to all just exceptions.

Accordingly, application stands disposed of.

ITA 57/2010 & ITA 62/2010

1. These two appeals have been preferred under Section 260A of Income Tax Act, 1961 (for brevity “Act 1961”) challenging the order dated 20th March, 2009 passed by the Income Tax Appellate Tribunal, Delhi (in short “ITAT”) whereby it has deleted addition of Rs.9,34,215/- and Rs.8,20,410/- made by the Assessing Officer on account of unexplained investment allegedly made by the two assesses in jewellery.

2. Ms. Prem Lata Bansal, learned counsel for revenue submitted that Commissioner of Income Tax (Appeals) and ITAT erred in law in deleting the addition made by the Assessing Officer even when the jewellery disclosed in VDIS-1997 had not been found in the earlier searches conducted on 15th September, 1992 and 10th February, 2000.



3. The ITAT in the impugned order has rejected the revenue appeal by observing as under:-

“6. We have heard the arguments of both the sides and also perused the relevant material on record. It is observed that the major source of jewellery found from the residence and lockers of Bhalla family was explained by the assesses as jewellery declared by Sh. Gautam Bhalla and Sh. Gaurav Bhalla under Voluntary Disclosure of Income Scheme, 1997. The AO, however, did not accept the said source on the ground that as per the VDIS disclosure, the jewellery was stated to be acquired during the previous year relevant to AY 1986-87 whereas no such jewellery was actually found during the course of search conducted at the residence of Bhalla family on 15.09.1992 and 10.02.2000. On the other hand, the learned CIT(A) accepted the said source relying mainly on the decision of Special Bench of ITAT at Kolkata in the case of ACIT vs. Surya Kant Dalmia -97 ITD 235.

7. At the time of hearing before us, the learned DR has contended that the immunity under VDIS, 1997 in respect of jewellery declared was not available to the assesses as no such jewellery was actually found during the course of search conducted on 15.09.1992 and 10.02.2000 i.e. after the previous year relevant to AY 1986-87 in which the jewellery declared under VDIS was stated to be acquired. In support of this contention, he has relied on the decision of Hon'ble Supreme Court in the case of Tek Chand etc. vs. Competent Authority – 112 CTR 458 wherein it was held that immunity granted under VDIS is of limited character and is not absolute or universal. However, as rightly submitted by the learned counsel for the assessee, in the said case, the assessee had claimed immunity on the basis of voluntary disclosure made under the Voluntary Disclosure of Income & Wealth Tax Act, 1976 in the proceedings under SAFEMA and while denying the same, it was held by the Hon'ble Apex Court that the immunity granted under Voluntary Disclosure of Income & Wealth Tax Act, 1976 is of limited character and extends to only those enactments mentioned specifically and does not extend to SAFEMA. On the other hand, the decision of



Special Bench of ITAT at Kolkata in the case of ACIT vs. Surya Kant Dalmia relied upon by the learned CIT(A) is directly on the issue wherein it was held that as provided under VDIS, 1997, the AO had grossly erred in holding that such silver utensils allegedly sold never existed. It was held that such finding of the AO was beyond his jurisdiction and against the scheme of VDIS, 1997. In our opinion, the assessee in the present case stands on a better footing than the assessee in the case of Surya Kant Dalmia (supra) before the Special Bench inasmuch as they were found to be in possession of the jewellery found during the course of search was sought to be explained on the basis of declaration made under VDIS, 1997, the AO denied the same on the ground that no such jewellery was found during the course of search conducted earlier on 15.09.1992 and 10.02.2000. Keeping in view the decision of Special Bench of ITAT at Kolkata in the case of ACIT vs. Surya Kant Dalmia (supra) and having regard to all the facts of the case, the action of the AO in not accepting the explanation of the assessee about the source of jewellery on the basis of VDIS declaration was totally unjustified and in our opinion, the learned CIT(A) was right in giving relief to the assessee by accepting the said explanation. In that view of the matter, we uphold the impugned orders of the learned CIT(A) and dismiss these appeals filed by the Revenue.”

4. In our opinion, just because the said jewellery was not found in the earlier searches, it cannot be said that non-existent jewellery had been declared in VDI Scheme 1997. In any event, as rightly pointed out by the ITAT, it was not open to the Assessing Officer to question existence of the said jewellery when it had been declared under the VDI Scheme.



5. Consequently, we are of the opinion that no substantial question of law arises in the present proceedings and accordingly, both the appeals are dismissed, but with no order as to costs.

MANMOHAN, J

CHIEF JUSTICE

JULY 15, 2010

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