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

+ **ITA 569 OF 2011**

% Judgment Delivered On: 28.9.2011

COMMISSIONER OF INCOME TAX (C)-III . . . APPELLANT

Through: Mr. N.P. Sahni, Sr. Standing Counsel
with Mr. Ruchesh Sinha, Advocate.

VERSUS

MONI KUMAR SUBBHA . . .RESPONDENT

Through: Mr. Manish Sharma, Advocate with
Mr. Vishal Malhotra, Advocate.

CORAM :-

**HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J (Oral)

1. Admit.

2. Following substantial questions of law are proposed for consideration:-

"1. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in law in deleting the addition of ₹ 32.50 lakhs made by the U/s 69 of the Income Tax Act, 1961 on account of unexplained investment in property?

2. Whether on the facts and circumstances of the case the order of Income Tax Appellate Tribunal is not perverse as it has failed to appreciate that the assessee has not discharged the rebuttable presumption cast on him by virtue of provisions of section 132(4A) of the Income Tax Act, 1961?"

3. With the consent of the learned counsel for the parties, we have heard the arguments finally at this stage itself and proceed to dictate the order.

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4. Having regard to the nature of the order we propose to pass, it is not necessary to discuss the facts in detail. At the same time, we deem it proper to state the bare facts which are necessary for the disposal of this appeal.

The assessee is an individual and derives income from house property, business of transportation, short term capital gains, income from other sources and agricultural income etc. A search and seizure operation was conducted at the various premises of the assessee on 23rd June, 1999 under Section 132 of the Income-Tax Act (hereinafter referred to as 'the Act'). These premises were located in Delhi and Assam. During the course of search, several loose papers which showed investment in properties and these documents were seized. Thereafter, notice under Section 158BC of the Act was issued pursuant

to which the assessee filed return of income for the relevant block period 1st April, 1989 to 23rd June, 1999 declaring 'Nil' undisclosed income. The Assessing Officer did not accept the return as filed. During the course of assessment proceedings he went through the seized documents and on that basis, number of additions were made. In respect of various additions, the Tribunal has remitted the case back to the Assessing Officer for fresh consideration and we are not concerned with those additions. The Tribunal, has however, deleted one addition of ₹ 32.50 lacs as unexplained investment under Section 69 of the Income-Tax Act and this appeal concerns only that part of the order of the Tribunal.

The assessee had purchased one property in Adchini near Mehrauli. Consideration shown in the Sale Deed was ₹ 9,50,000/- apart from ₹ 85,000/- for other charges. It was purchased from one Smt. Daropadi Devi w/o Tulsidas . During the search, the documents which were seized included document no.28 which showed 'earnest money receipt'. As per this receipt purportedly signed by Smt.Daropadi Devi and witnessed by one Mr. Harish Arora. The price for the said property was settled at ₹ 42 lacs and the assessee had paid ₹ 4 lacs vide that receipt and agreed to pay the balance amount of ₹ 38 lacs by 22nd

June, 1993 on seller undertaking to handover the vacant possession by that date. An Agreement to Sell dated 21st May, 1993 was found in respect of this very property showing consideration of ₹ 42 lacs which was purportedly signed by Smt. Dropadi Devi and witnessed by Mr. Harish Arora and Tulsidas, husband of the seller. On the basis of these documents, the Assessing Officer formed the view that the actual consideration paid by the assessee to Smt. Dropadi Devi for purchase of aforesaid property was ₹ 42 lacs and not ₹ 9.50 lacs as reflected in the sale deed. He accordingly made addition of ₹ 32.50 lacs under Section 69 of the Act. We may also record that the Assessing Officer had recorded the statement of Mr. Tulsidas, husband of the seller and as per the said statement, Mr. Tulsidas had confirmed that consideration received from the aforesaid property from the assessee was ₹ 42 lacs and not 9.5 lacs. The assessee, however, denied the ownership of document no.28. Before the Assessing Officer he also filed Affidavit dated 22nd September, 2006 before the CIT (A) stating that he had purchased the property only for ₹ 9.50 lacs and the documents no. 28 to 33 which included the aforesaid agreement to sell and receipt were not signed by him. The Affidavit of Smt. Dropadi Devi dated 29th July, 2006 was also filed stating that she had sold the property only at ₹ 9.50 lacs and denied her signature on document

no.28 i.e 'earnest money receipt'. The CIT (A) affirmed the order of the assessing Officer on these aspect holding that these affidavits were executed after the assessment orders were passed by the Assessing Officer and were nothing but self-serving device. He also observed that Smt. Dropadi Devi was an illiterate lady and did not know even the consequences of filing such an affidavit. He also concluded that the assessee had not discharged rebuttal presumption cast upon him by virtue of provisions of Section 132 (4A) of the Act. The documents were, admittedly seized from the farm house of the assessee and no plausible explanation was offered as to how it came in the possession and personal custody of the assessee.

The ITAT, as pointed above, deleted the addition by giving its reasons which can be culled out from reading of the impugned order as under:-

- (i) The registration deed was also seized which showed purchase consideration of ₹ 9.5 lacs. There is no evidence in the possession of the Revenue that actual money of ₹ 32.50 lacs have been paid. The inference drawn is only on the basis of documents which have been denied by the assessee as well as the seller by fling their affidavits. The seller has denied even her signatures.
- (ii) The Revenue had recorded the statement of Sh. Tulsidas, husband of the seller. However, no

opportunity of cross-examination was afforded to the assessee even when he specifically asked for the same.

- (iii) The CIT (A) had asked for remand report from the Assessing Officer on the issue of affidavit by the assessee denying the signatures on the documents. The Assessing Officer had given the suggestion that verification of the signatures can be done from Government Examiner of Question Document, Chandigarh. However, subsequently, the Assessing Officer took an opposite stand by suggesting that no useful purpose would be served by sending the documents to Government Examiner. The CIT (A) has not considered this aspect at all.

5. Insofar as first reason is concerned, the approach of the Tribunal does not seem to be justified. The seized documents, if are genuine, than on the basis of these documents itself it can be safely concluded that the actual consideration paid for the property was ₹ 42 lacs and not ₹ 9.50 lacs as shown in the sale deed. The CIT (A) was right to this extent that it was for the assessee to discharge the onus once these documents were found from his possession and pertain to the same property.

6. In **K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another**, 131 ITR 597, the Supreme Court has held that burden of prove is on the Revenue when there are allegations of understatement

on concealment in the consideration shown and it is for the Revenue to show that some more money not reflected in the documents executed between the parties pass-hands. This is an onerous burden and it is not easy for the Revenue authorities to prove such understatement of price as in case of sale purchase transactions, both the parties would be interested in not disclosing the real consideration if actual consideration is more than what is reflected in the sale deed. It is seldom for such type of documents comes in the possession of the revenue as in the instant case, as a result of search and seizure operation. It is for this reason, we have made remarks that once this document is found to be genuine i.e. signatures of the persons appearing on these documents are genuine then it can be said that the Revenue has discharged the initial burden and onus shifts on the assessee.

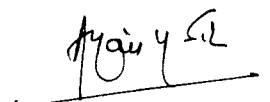
7. Mere denial of signatures by the assessee and the seller would not be of any consequence. At the same time, we are of the opinion that once the signatures were denied, the Department should have sent the documents for the examination by experts to verify the genuineness of the signatures. Further, the assessee was also entitled to cross-examine Mr. Tulsidas when he specifically made a request

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thereof. If the cross-examination is not allowed than the statement of Mr. Tulsidas cannot be taken into consideration.

8. We are of the view that matter should be remitted back to the assessing Officer for adjudication of the issue afresh. The Assessing Officer shall get the documents examined for verification of the signatures appearing thereupon from the Government Examiner of Question Document, Chandigarh or any authorized Laboratory. The assessee will cooperate with the Assessing Officer in this behalf. The Assessing Officer if wants to rely upon the statement of Mr. Tulsidas shall also afford an opportunity to the assessee for his cross examination.

9. The questions are answered in the aforesaid manner, as a result, the impugned order passed by the Tribunal is set aside and the matter is remitted back to the Assessing Officer for adjudication afresh in the light of our observation made in this order.


(A.K. SIKRI)
JUDGE


(SIDDHARTH MRIDUL)
JUDGE

SEPTEMBER 28,2011/skb