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

+ **ITA 923/2017**

COMMISSIONER OF INCOME TAX

..... Appellant

Through Mr. Ashok M. Manchanda with Mr.
Raghvendra K. Singh and Mr. Anand
K. Chaudhuri, Advocates.

versus

RAKESH MOHAN

..... Respondent

Through Ms. Rano Jain with Mr. Pranjal
Srivastava and Ms. Devina Sharma,
Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

% **01.11.2017**

CM No.39262/2017 (exemption)

Exemption is allowed subject to all just exceptions.

ITA 923/2017

1. The Revenue states that a substantial question of law has arisen due to deletion of Rs.2,86,86,270/-, which was assessed in the hands of the respondent.
2. The respondent is a former Chief Executive Officer in the Delhi Jal Board and was charged with having manipulated the award of contract. He was prosecuted. The contract was awarded to one M/s. Kaveri Infrastructure Pvt. Ltd. and M/s. Pipeway Ltd., a New Zealand based entity. The subject matter of the addition was a loan of US Dollar 6,59,000/- given to one Mr. Vijay Kumar Kataria, who had executed the power of attorney in favour of the assessee's Son-in-law Sh. Mohit Mehra.
3. These amounts were sought to be included in the assessment in the hands of the respondent as *Benami* and brought to tax under Section 69.

4. The CIT(A) reversed the AO's findings, holding as follows:-
- “7. *The above FIR mentions that the contractor Sh. Vijay Kumar Kataria had executed power of attorney in favour of appellants son-in-law Shri. Mohit Mehra on 23.05.2005 and Sh. Mohit Mehra signed various documents to obtain bank loan of \$3,29,500 on 23.05.2005. The only link between the appellant and the property is the above power of attorney in favour of the appellant's son in law and the documents signed by the son in law to obtain the bank loan. This evidence mentioned in the FIR is not adequate to conclude that the appellant have property in USA valued at Rs.2,86,86,270/- as done in the assessment order by the A.O. The assessment order also mentions that if the CBI files no charge sheet after the completion of the investigations the appellant can obtain suitable relief from appellate authorities. In the final charge sheet filed by the CBI there is no mention about the property transactions in USA. The charge sheet is only about booking air tickets for the appellant and his family members by some of the contractors. The CBI court in its decision passed on 26.03.2013 had stated that the appellant was not found guilty of even on this charge. Since, the assessment order was based on the FIR filed by the CBI and as the CBI itself had not found any material to pursue the matter regarding the property transaction in USA against the appellant in the charge sheet, the addition of Rs.2,86,86,270/- is sustainable as the addition was not made on the basis of any evidence. Even on the basis of the FIR the addition can be made at best on the son in law only, who is a permanent resident of USA and assessed to tax in USA, and not on the appellant. Moreover, the appellant's AR during the appellate proceedings had informed that the same property in USA was added in the hands of Shri Vijay Kumar Kataria, the actual purchaser of the property in USA by DCIT Central Circle-11 in his order u/s 153A passed on 27.03.2009. Since the addition of Rs.2,86,86,270/- made by the AO in hand of the appellant is not a protective assessment and the department cannot tax the same property twice on the appellant and on the actual purchaser of property. Therefore, I am of the view that the addition of Rs.2,86,86,270/- made by the AO as the value of property in USA is not sustainable as the addition is not based on any evidence that the appellant was the owner of*

the above property. It is mentioned clearly even in the FIR that the property was purchased by Sh. Vijay Kumar Kataria only and therefore it cannot become the income for the appellant on the premise that the appellant's son in law has power of attorney over the above property for some period of time. Therefore, ground no.2 is allowed and the addition of Rs.2,86,86,270/- is deleted."

5. The ITAT affirmed the findings after noticing that the assessee had been acquitted by the competent court.

6. Having regard to the circumstances, the findings and the facts, the Revenue has not been able to premise its claim upon its link through power of attorney under the provisions of the Act or any other related enactments. The Court is of the opinion that no substantial question of law arises.

7. The appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

SANJEEV SACHDEVA, J

NOVEMBER 01, 2017/st