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

\+ ITA 671/2005

COMMISSIONER OF THE INCOME TAX ..... Appellant
Through: Mr. Deepak Anand, Adv.

versus

GOPAL SINGH SOOD ..... Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

<u>O R D E R</u>

% 05.09.2018

In this Income Tax Appeal under Section 260-A of the Income Tax Act, the order of the Income Tax Appellate Tribunal (ITAT) dated 06.10.2004 has been impugned; the relevant Assessment Year is the block period 1987-88 to 1997-98. At the outset, the Court noticed that though the appeal has been pending over 14 years, no question of law was framed. This appears to be on account of the fact that the present appeal was tagged along with ITA 224/2003 and certain other connected appeals. That appeal by the Revenue was dismissed by the order dated 02.11.2015.

The facts are that one Mr. Sunil Aggarwal, engaged in the business of plastic raw material and carrying on a commercial activity under two proprietorship concerns M/s Polychem Traders and M/s Petrochem Overseas (India), was subjected to search and seizure operations on 20.06.1996, at both his residential and business premises. The search proceedings continued till 30.07.1996. The said Mr. Sunil Aggarwal was also a Director in Petro Impex (India) Pvt. Ltd. The ensuing assessment in the block period was completed under Section 158BC(1), at an undisclosed income of ₹3,71,79,576/-. In the course of the search proceedings, substantial cash amount was found with the present respondent in this appeal (Gopal Singh Sood), who is an employee of Sh. Sunil Aggarwal. He too was subjected to income tax proceedings. In the assessment order by the AO under Section 158BC of the Act, two amounts - of ₹86 lakhs and ₹41 lakhs were added. Mr. Sunil Aggarwal and the assessee (respondent in this case) opposed the appeal before the Tribunal. The Tribunal set aside the amounts brought to tax. The present assessee was assessed on protective basis, on the footing that in the event of Mr. Sunil Aggarwal's assessment being set aside, his residuary liability could be pursued.

The ITAT while dismissing ITA 224/2003, this Court observed as follows:

> *"9. In appeal filed before the ITAT, there was a concurrent view of the two Members comprising the Bench i.e. Mr. R.K. Gupta and Mr. R.S. Syal that the additions made in the sum of Rs.86 lakhs to the income of the Assessee should be deleted. It was noted that pursuant to the search and seizure, the Assessee had surrendered a sum of Rs.2.26 crores which included a sum of Rs.86 lakhs, viz., the cash seized from Canara Bank. It was noted that the explanation offered by the Assessee for the sum constituting Rs.2.26 crores minus 86 lakhs had been accepted by the AO. It was held that the explanation given by the Assessee in respect of the said sum of Rs.86 lakhs also ought to have been accepted by the AO. The AO had*

not doubted the sales and purchase figures or the fact of cash sales having been made. It was accordingly held that the addition of Rs.86 lakhs was not justified."

In the light of the above, it is quite evident that the sum of ₹86 lakhs, though seized from the present assessee was surrendered, offered and accepted as part of the larger amount of ₹2.26 crores by the asseesse's employer i.e. Mr. Sunil Aggarwal and as such no question of law therefore arises because that amount was brought to tax. As far as the other sum of ₹41 lakhs is concerned, we notice that the Revenue does not appear to have even preferred an appeal before this Court against the order of the ITAT made at the hands of Mr. Sunil Aggarwal, on a substantive basis. In these circumstances, the insistence on stating that that amount should be added in the hands of the present assessee (Mr. Gopal Singh Sood) is not justified.

In view of the above discussion, no question of law arises. The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

SEPTEMBER 05, 2018/akv