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

\+ ITA 1082/2010

COMMISSIONER OF INCOME TAX ..... Appellant
Through Ms. Suruchii Aggarwal, Advocate

versus

M/S. SILTECH ENGINEERING (P) LTD. ..... Respondent
Through None

% Date of Decision : 6th August, 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

J U D G M E N T

MANMOHAN, J

1. The present appeal has been filed under Section 260A of Income Tax Act, 1961 (for brevity "Act, 1961") challenging the order dated 6th January, 2010 passed by the Income Tax Appellate Tribunal (in short "ITAT") in ITA No. 4296/Del/2009 for the Assessment Year 2006-2007.

2. The Revenue is aggrieved by the orders of the ITAT and the Commissioner of Income Tax (Appeals) [for short "CIT(A)"] whereby the addition of Rs. 25,00,000/- made by the Assessing Officer

(hereinafter referred to as "AO") under Section 144 of Act, 1961 has been deleted.

3. The facts of the present case are that on 28th November, 2006 respondent-assessee filed a return of income tax declaring loss of Rs. 16,394/-. The same was processed under Section 143(1) of Act, 1961. However, the respondent-assessee's case was selected for scrutiny. Notices under Section 143(1)/143(2) of Act, 1961 were issued. Despite issuance of repeated notices, the same were returned with the postal remark *'left, return to sender'*. The AO on 26th December, 2008 completed assessment to the best of his judgment under Section 144 of Act, 1961.

4. Being aggrieved by the aforesaid order passed by AO, respondent-assessee filed an appeal before CIT(A). During the said proceedings, respondent-assessee submitted audited balance sheet wherein the assessee had shown Rs. 2,00,00,000/- as fresh unsecured loan from M/s. P.R. Shiva Finance P. Ltd. Assessee also submitted details regarding loan confirmation. The CIT(A) vide order 4th August, 2009 deleted the addition of Rs. 25,00,000/- made by the AO. The Revenue's appeal against the aforesaid order was dismissed by the ITAT vide impugned order dated 6th January, 2010.

5. Ms. Suruchii Aggarwal, learned counsel for Revenue submitted that the ITAT had erred in law in not appreciating that CIT(A) had violated Rule 46A of Act, 1961 by not giving reasonable opportunity to the AO to examine the fresh evidence. She also submitted that both the CIT(A) and the ITAT had failed to appreciate that AO was within

his power to complete the assessment proceedings under Section 144 of Act, 1961. She accordingly, prayed that the impugned order be set aside and the matter be restored to the file of AO for reinvestigation.

6. Having heard learned counsel for Revenue, we are of the view that the orders passed by CIT(A) and ITAT call for no interference. In fact, upon a perusal of the paper book, we find that the AO has, without any basis, estimated the income of the assessee at Rs. 25,00,000/-.

7. Undoubtedly, the AO has the power to frame an assessment under Section 144 of Act, 1961, but while doing so, he must make an honest and fair estimate of the income of an assessee by following rules of natural justice, equity and good conscience. The AO's best judgment and order should have a reasonable nexus to the available material and circumstances of the case. While passing the best judgment and order, AO should have collected the material by exercising his quasi-judicial powers. However, as found by the CIT(A), the AO has not given any reasons for determining the respondent-assessee's income at Rs. 25,00,000/-. Consequently, the said finding of the AO is unsustainable.

8. As far as Ms. Aggarwal's submission with regard to violation of Rule 46A of Act, 1961 is concerned, we are of the view that the ITAT has given cogent reasons for rejection of the same. The ITAT in the impugned Order has observed as under :-

> *"5. Learned DR submitted before us that the order of the learned CIT(Appeals) be set aside and the issue be restored to the Assessee officer for reinvestigation. On due consideration of the submissions, we do not find any merit in it because it is the Assessing Officer who ought*

to have collected the material by exercising his quasi-judicial powers. The ITAT while sitting in second appellate authority is not obliged to provide a fresh inning to the Assessing Officer to reinvestigate the issues. It is for the revenue to take recourse permissible under the IT Act. We have confronted the Learned DR at the time of hearing to show as the material which can pursued us to reverse the findings of the learned CIT(Appeals) and restore that of Assessing Officer. He was unable to bring any material on record. We could understand his logic if some material in the shape of questionnaire or other evidence collected by the Assessing Officer was annexed with the appeal in order to justify the nexus between the estimated income and the material possessed by the Assessing Officer. Learned Assessing Officer has only made a reference of different notices and then all of a sudden observed that income of the assessee is estimated at Rs. 25 lacs. Learned CIT(Appeals) has appreciated the facts and circumstances in right perspective and no interference is called for."

9. Keeping in view the aforesaid admission of the Revenue before ITAT, we are of the opinion that no useful purpose would be served by remanding the matter back to AO.

10. Consequently, the impugned appeal, being devoid of merit, is dismissed *in limine.*

MANMOHAN, J

CHIEF JUSTICE

AUGUST 6, 2010
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