

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 16.02.2010

+ **ITA 1264/2008**

COMMISSIONER OF INCOME TAX ... Appellant

- versus -

ASHWANI GUPTA ... Respondent

Advocates who appeared in this case:-

For the Petitioner : Ms P. L. Bansal with Mr Paras Chaudhry
For the Respondent : Mr Salil Kapoor with Mr Sanat Kapoor,
Mr Ankit Gupta and Ms Swati Gupta

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

BADAR DURREZ AHMED, J (ORAL)

1. This appeal by the revenue is directed against the order dated 08.02.2008 passed by the Income Tax Appellate Tribunal in IT (SS) No. 140/Del/2006 relating to the block period 01.04.1990 to 20.08.2000.

2. The Tribunal has confirmed the order passed by the Commissioner of Income Tax (Appeals) which held the entire addition made by the Assessing Officer to be invalid and had deleted the same. The Commissioner of Income Tax (Appeals) had clearly held that the Assessing Officer had passed the assessment order in violation of the principles of natural justice

inasmuch as he had neither provided copies of the seized material to the assessee nor had he allowed the assessee to cross-examine one Mr Manoj Aggarwal on the basis of whose statement the said addition was made. The Commissioner of Income Tax (Appeals) also held that the entire addition deserved to be deleted, particularly so, because the transactions also stood duly reflected in his regular returns.

3. The Tribunal, after referring to the decision of this Court in the case of *CIT v. SMC Share Brokers : 288 ITR 345 (Del)*, came to the conclusion that there was no infirmity in the order of the Commissioner of Income Tax (Appeals) and, therefore, declined to interfere with the same and dismissed the appeal of the revenue.

4. The learned counsel for the revenue/ appellant sought to question the findings of the Tribunal to the effect that the principles of natural justice had not been followed. She attempted to challenge the finding that copies of the seized material had not been given to the assessee nor was the assessee allowed to cross-examine the said Mr Manoj Aggarwal. She sought to draw our attention to the order-sheet of the Assessing Officer of 25.07.2005 to make submissions in this regard. But, such an attempt on her part cannot be allowed at this juncture particularly when the finding regarding violation of principles of natural justice had been accepted by the revenue before the Tribunal on more than one occasion. In the first instance, the only ground of appeal taken by the revenue was that the Commissioner of Income Tax (Appeals) had erred in deleting the addition of Rs 6,53,250/- made by the

Assessing Officer as income from undisclosed sources. No ground was taken that the principles of natural justice had, in fact, been followed and that the Commissioner of Income Tax (Appeals) had wrongly held that copies of the seized material had not been provided or that opportunity to cross-examine Mr Manoj Aggarwal had not been provided.

5. Secondly, in fact, a rectification application being MA 264/Del/2008 under Section 254(2) of the Income Tax Act, 1961 had been filed by the revenue before the said Tribunal. In that also, in paragraph (g) of the Miscellaneous Application, the revenue had submitted as under:-

“(g) Because, although findings of the Tribunal are factually correct but the decision of the Tribunal is not acceptable because violation of the canons of natural justice in itself is not fatal enough so as to jeopardize the entire proceedings. In the interest of justice, the Tribunal could have set aside the assessment order with the limited purpose of offering assessee an opportunity to cross-examine Shri Manoj Aggarwal before completing the proceedings.”

(underlining added)

6. A reading of the said paragraph (g) makes it clear that the revenue had accepted the findings of the Tribunal on facts as also the position that there had been a violation of principles of natural justice. However, the revenue's plea was that the violation of principles of natural justice was not fatal so as to jeopardize the entire proceedings. The said miscellaneous application was also rejected by the Tribunal by its order dated 28.11.2008.

7. In view of the foregoing circumstances, we feel that no interference with the impugned order is called for. The Tribunal has correctly

understood the law and applied it to the facts of the case. Once there is a violation of the principles of natural justice inasmuch as seized material is not provided to an assessee nor is cross-examination of the person on whose statement the Assessing Officer relies upon, granted, then, such deficiencies would amount to a denial of opportunity and, consequently, would be fatal to the proceedings. Following the approach adopted by us in *SMC Share Brokers (supra)*, we see no reason to interfere with the impugned order. No substantial question of law arises for our consideration.

The appeal is dismissed.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

**FEBRUARY 16, 2010
SR**