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

+ ITA 640/2010

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

versus

SIKKA OVERSEAS PVT. LTD. Respondent
Through: Mr. K.R. Manjani, Advocate.

And

+ ITA 644/2010

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

versus

SIKKA OVERSEAS PVT. LTD. Respondent
Through: Mr. K.R. Manjani, Advocate.

% Date of Decision: 23rd September, 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 two appeals have been filed under Section 260A of the Income Tax Act, 1961 (for brevity “Act”) challenging the common judgment and order dated 06th August, 2009 passed by the Income Tax Appellate Tribunal (in short “Tribunal”) in ITAs No. 1480/Del/2008 and 799/Del/2009 for the Assessment Year 2005-2006.

2. It is pertinent to mention that while the first appeal is a quantum appeal, the second is a penalty appeal. However, as both the appeals arise out of a single judgment, they are being disposed of by a common order.

3. Ms. Suruchii Aggarwal, learned counsel for the revenue pointed out that the respondent-assessee had neither produced the relevant documents before the Assessing Officer (in short, “AO”) nor had made any request under Rule 46A of the Act for admission of the said documents as additional evidence. Consequently, Ms. Aggarwal submitted that the Tribunal had erred in law in holding that the respondent-assessee had produced all the relevant documents before the AO especially when AO in his assessment order had stated that though confirmation from the Director had been filed but no copy of bank account and I.T. particulars had been furnished by the respondent-assessee before the AO.

4. However, upon perusal of the impugned order, we find that the final fact finding authority namely, the Tribunal has found that the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"] had wrongly treated the papers filed by the respondent-assessee as new evidence when from the written submissions filed by the respondent-assessee before the CIT(A), it was apparent that the said documents had been placed along with the paper book. Since this fact was not disputed by the departmental representative, the Tribunal concluded that the said relevant papers along with copy of confirmation and returns had been filed before the AO.

5. During the course of hearing, we offered to Ms. Suruchii Aggarwal, learned counsel for the revenue that if she would like to withdraw the present appeals to file an application under Section 254(2) of the Act. However, she stated that she had no instructions to make such a statement. In any event, in our opinion, the said finding can neither be disputed nor said to be perverse especially when the appeal paper book filed by the respondent-assessee before the CIT(A) has not been filed along with the appeal.

6. Moreover, upon perusal of the appeal paper book, we find that as the respondent-assessee Director's identity was established and the transactions were not denied, the initial burden cast on the respondent-assessee stood discharged. Accordingly, the present quantum appeal, being bereft of merit, is dismissed.

7. Since we are not inclined to interfere in the quantum appeal, the second appeal pertaining to penalty is also dismissed.

MANMOHAN, J

CHIEF JUSTICE

SEPTEMBER 23, 2010

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