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

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Date of Decision : 13th September, 2012.

+ ITA 281/2012
+ ITA 285/2012
+ ITA 364/2012
+ ITA 365/2012

CIT

..... Appellant

Through: Ms. Suruchi Aggarwal, Sr. Standing
Counsel.

versus

PC CHEMICALS

..... Respondent

Through: Mr. S. Krishnan, Advocate.

+ ITA 282/2012
+ ITA 286/2012
+ ITA 287/2012
+ ITA 366/2012

CIT

..... Appellant

Through: Ms. Suruchi Aggarwal, Sr. Standing
Counsel.

versus

ASHOK PRASAD GUPTA

..... Respondent

Through: Mr. S. Krishnan, Advocate.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR

S. RAVINDRA BHAT,J: (OPEN COURT)

1. The Revenue is aggrieved in these appeals by orders of the Income Tax Appellate Tribunal ('Tribunal', for short) and they are disposed of by this common judgment since the subject matter of these appeals is common. The question of law sought to be urged is whether the Tribunal fell into error in not remanding the matter to the Assessing Officer for providing opportunity to the assessee to furnish relevant and material documents instead of deleting the addition.

2. Briefly the facts are that pursuant to the search and seizure under Section 132 of the Income Tax Act, 1961 ('Act', for short) on 15.12.2004 in the premises of one Brij Mohan Gupta, certain documents and the materials were found and seized. On the basis of the statements of his son and accountant, the Assessing Officer reopened the assessment of the assessee herein. During the course of the reassessment proceedings, the Assessing Officer placed reliance upon the statement of Brij Mohan Gupta and certain other materials which according to him were relevant and pertain to the assessee. On that basis the Assessing Officer framed the assessments. The assessee claimed to be aggrieved and carried the matter in appeal before the CIT (Appeals) who by his order set-aside the assessments even while upholding the notice under Section 148 of the Act. The Revenue as well as the assessee went into cross appeals to the Tribunal. The Revenue's appeal was rejected by the Tribunal which affirmed the observations of CIT (Appeals) with regard to denial of opportunity. As far as the assessee's appeal was concerned, it was dismissed as not pressed. The Tribunal held as follows: -

"11. Having heard the parties and having perused the material on record, we do not find any force in the contentions of the department. Undeniably, there is no material brought on record by the AO to support the additions, which were based on mere conjectures and surmises, without any evidence calling for such additions. Further, the very statement forming the basis of the additions, i.e., the statement of

Shri B. M. Gupta, was never provided to the assessee. The assessee was thus never confronted with the material on which the additions were based. The action of the AO was, therefore, hit by the principles of natural justice. The assessee was condemned unheard.”

3. The Revenue relies upon the recent decision of the Supreme Court reported as *ITO v. M. Pirai Choodi*, (2011) 334 ITR 262 (SC). In this case the Court had disapproved the approach of the concerned High Court which set-aside an order of reassessment on the ground of the assessee not having been given opportunity to cross-examine the concerned witness. The relevant observations of the Supreme Court in this regard are as follows: -

“.....We are of the view that the High Court should not have set aside the entire assessment order. At the highest, the High Court should have directed the Assessing Officer to grant an opportunity to the assessee to cross-examine the concerned witness. Be that as it may, we are of the view that, even on this particular aspect, the assessee could have gone in appeal to the Commissioner of Income-tax (Appeals). The assessee has failed to avail of the statutory remedy. In the circumstances, we are of the view that the High Court should not have quashed the assessment proceedings vide the impugned order.”

4. In the present case too this Court is of the view that once the Assessing Officer was of the opinion that the relevant materials and documents necessitated a conclusion and he even proceeded to state (as he did in the assessment order) that such materials were shown or disclosed to the assessee’s representative – it was incumbent upon him to discuss and advert to those facts. The counsel for the assessee disputed that in fact such material was ever disclosed. We do not wish to enter into this controversy except to state that since the Assessing Officer was of the distinctive opinion that the material obtained during the search of B. N. Gupta and his associates’ premises yielded some relevant materials, he ought to have disclosed them to the assessee. But that did not happen. In this context this Court recollects the Constitution Bench judgment in

Dhakeswari Cotton Mills Ltd. V. Commissioner of Income-tax, West Bengal v. CIT, 26 ITR 775 (SC) wherein the Court had then very presciently observed as follows: -

“As regards the second contention, we are in entire agreement with the learned Solicitor-General when he says that the Income-tax Officer is not fettered by technical rules of evidence and pleadings, and that he is entitled to act on material which may not be accepted as evidence in a court of law, but there the agreement ends; because it is equally clear that in making the assessment under sub-section (3) of Section 23 of the Act, the Income-tax Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment under Section 23(3). The rule of law on this subject has, in our opinion, been fairly and rightly stated by the Lahore High Court in the case of Seth Gurmukh Singh v. Commissioner of Income-tax, Punjab.

In this case we are of the opinion that the Tribunal violated certain fundamental rules of justice in reaching its conclusions. Firstly, it did not disclose to the assessee what information had been supplied to it by the departmental representative. Next, it did not give any opportunity to the company to rebut the material furnished to it by him, and lastly, it declined to take all the material that the assessee wanted to produce in support of its case. The result is that the assessee had not had a fair hearing. The estimate of the gross rate of profit on sales, both by the Income-tax Officer and the Tribunal, seems to be based on surmises, suspicions and conjectures.”

5. The present case is no different. The assessment order is bereft of any discussion as to what were the materials adverse to the assessee and what was the inference that could be drawn in the light of those materials and documents. Consequently, even while we do not fault the Tribunal’s reasoning about the denial of opportunity to the assessee, the outcome has to be slightly different especially in the light of the decision of the Supreme Court in *M. Pirai Choodi (supra)*. Resultantly these matters have to be remitted for fresh consideration by the Assessing Officer who

shall proceed to make available the necessary documents, adverse to the assessee, and proceed in accordance with Section 69A of the Income Tax Act, 1961. The order so made shall appropriately discuss the materials as well as the assessee's explanation in that regard.

6. The Revenue's appeals are allowed in the above terms.

S. RAVINDRA BHAT, J.

R.V.EASWAR, J.

SEPTEMBER 13, 2012

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