IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

INCOME TAX APPEAL (ITL) NO. 129 OF 2010

(The Commissioner of Income Tax – IV, Nagpur vs. Shri Surendrasingh Johar Proprietor M/s. Super Road Lines, Nagpur)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's Orders.	Court's or Judge's orders.

CORAM : B.P. DHARMADHIKARI &
P.N. DESHMUKH, JJ.
OCTOBER 13, 2015.

On 02.09.2011, after hearing Shri Parchure, learned counsel for the appellant in this appeal and ITL No. 130 of 2010, this Court has noted the contention that Income Tax Appellate Tribunal (ITAT) could not have deleted addition of Rs.2,18,000/- as upheld by the Assessing Officer (AO) and Commissioner of Income Tax (Appeals) (CIT (A). Thereafter, though the respondent – assessee was served, he chose not to appear. On 06.02.2015, this Court directed issuance of fresh notice and made it clear that if the assessee failed to respond, the Court would proceed further to decide the appeal at the stage of admission itself. That fresh notice is again served upon the assessee and he has again not responded.

In the light of order dated 02.09.2011, a substantial question of law, whether ITAT is justified in reversing the concurrent findings of fact recorded by the AO and CIT (A) arises for adjudication.

After hearing Shri Parchure, learned counsel we find that as the action of addition of Rs.2,18,000/- is held to be unsustainable/ illegal expenditure by Assessing Officer and CIT (A), the respondent – assessee has approached the ITAT. ITAT in para 8 of its order in the said Appeal No. 82/NAG/2008 has observed that the entries appearing in balance sheet of the assessee reveal that the payment of Rs. 2,18,000/- was not claimed therein as an expenditure and, therefore, it could not have been added back as done by the CIT(A). It also noted that CIT(A) rejected explanation of the assessee but did not give any reason in support.

The reasons given by the CIT(A) are contained in para 6 of its order. The facts there show that after noticing position emerging from books of accounts, reliance has been placed upon the statement recorded under Section 132(4) of the Income Tax Act, wherein the assessee admitted that the amount of Rs.2,18,000/- was illegal expenditure incurred by him for obtaining bank loan. This finding has not been considered by the ITAT at all.

We, therefore, find substance in the contention of Shri Parchure, learned counsel, that the ITAT has not adverted to full facts while reversing the concurrent judgment.

The admission given by the assessee has been overlooked and thus the ITAT has acted with material irregularity in exercise of jurisdiction available to it. That irregularity has resulted in unsettling a finding on fact which could not have been labeled as perverse. As such, we quash and set aside the judgment of the ITAT delivered in the appeal filed by the assessee i.e. Appeal No. 82/NAG/2008 and restore the findings of Commissioner of

Income Tax (Appeals).

Income Tax Appeal No. 129 of 2010 is accordingly allowed and disposed of. However, there shall be no order as to costs.

JUDGE **JUDGE**

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