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

INCOME TAX APPEAL NOS.16, 38 & 41 OF 2015.

The Commissioner of Income Tax (Central)
-**VERSUS**-
M/s. Gigeo Construction Company Pvt. Ltd. Nagpur.

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

Shri S.N. Bhattad with Shri A. Bhoot, Advocate for the appellant.
Shri Moryani, Advocate for the Respondent.

CORAM : SMT.VASANTI A. NAIK AND A.M. BADAR, JJ.

DATE : AUGUST 07, 2015.

Heard.

Since the issues involved in these appeals is identical, and they arise from similar orders passed by the Income Tax Appellate Tribunal, Nagpur they are heard together and are decided by this common order.

The respondent / assessee is a builder, engaged in the business of construction of buildings. For the relevant assessment years, the respondent / assessee had filed the return of income and the assessment was completed under Section 139 of the Income Tax Act. After the returns were filed, there was a search, and the department noticed undisclosed income. The respondent / assessee then filed a revised return in respect of the undisclosed income, and the assessment was done after the revised return was filed. Being aggrieved by the assessment order, the respondent / assessee filed appeals before the Commissioner of Income Tax (Appeals). However, since at the time of the presentation of the appeals, the assessee had failed to deposit the tax due on the income returned, the appeals filed by the assessee were dismissed by the Commissioner (Appeals). The assessee filed appeals against the orders of the Commissioner, and the orders of the Assessing Authority, before the Income Tax Appellate Tribunal. It is not in dispute that during the pendency of the appeals before the Income Tax Appellate Tribunal, the respondent / assessee deposited the tax due on the income returned by him. The Income Tax Appellate Tribunal, partly allowed the appeals and remanded the matter to the Commissioner (Appeals), for a decision on the appeals filed by the respondent / assessee against the orders of the Assessment Officer. The orders of the Income Tax Appellate Tribunal are challenged in these appeals.

Shri Bhattad, the learned Counsel for the department submitted that it was necessary for the respondent/assessee to deposit the tax due on the income returned by him, at the time of presentation of the appeals before the Commissioner (Appeals). It is submitted that the appeals were rightly rejected by the Commissioner (Appeals), and the Tribunal did not have jurisdiction to partly allow the appeals and remand the matter to the Commissioner (Appeals). The learned Counsel relied on the judgments reported in **1975 ITR 549 (SC) (Vijay Prakash Mehta .vrs. Collector of Customs)**, **(2009) 316 ITR 218 (Bom) (Commissioner of Income -Tax .vrs. Manoj Kumar Beriwal)** and **(2006) 284 ITR 413 (MP) (Shyam Electric Works .vrs. Commissioner of Income Tax)**, to substantiate his submissions.

On hearing the learned Counsel for the parties and on a perusal of the orders of the Income Tax Appellate Tribunal, it appears that no substantial question of law arises for determination in these appeals. Admittedly, the respondent / assessee had not deposited the tax due on the income returned by him at the time of filing of the appeals before the Commissioner (Appeals), however, the respondent/ assessee deposited the tax due on the income returned with the permission of the Income Tax Appellate Tribunal during the pendency of the appeals before the Tribunal. Since there was a compliance of the condition to deposit the tax due on the income returned, the Tribunal, in its discretion rightly allowed the appeals filed by the respondent / assessee and directed the Commissioner (Appeals) to decide the appeals filed by the assessee. The orders of the Tribunal are just and proper. The judgments in the case of *Vijay Prakash Mehta .vrs. Collector of Customs, Commissioner of Income -Tax .vrs. Manoj Kumar Beriwal* and *Shyam Electric Works .vrs. Commissioner of Income Tax (supra),* and relied on by the counsel for the department cannot be made applicable to the facts of these appeals. In none of the aforesaid reported cases, the assessee had deposited the tax due on the income returned during the pendency of the appeals, as was done in these cases. Infact it has been held in the judgment in the case of *Shyam Electric Works .vrs. Commissioner of Income Tax (supra),* that an opportunity to the assessee was required to be granted in view of the proviso to Section 249[4] for seeking exemption from payment of tax. In the cases in hand the assessee had deposited the tax due on the income returned, before the Tribunal. No substantial question of law would arise for consideration in these appeal.

Since no question of law arises for consideration in these appeals, the appeals are dismissed with no order as to costs.

JUDGE **JUDGE**

Rgd.