$~2

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

\+ ITA 723/2016, CM APPL.39122/2016

PR. COMMISSIONER OF INCOME TAX ..... Appellant

Through: Mr. Rahul Choudhary, Advocate.

versus

WESTERN UNION FINANCIAL SERVICES ..... Respondent

Through: Mr. Mayank Nagi with Ms. Husnal Syali, Mr. Tarun Singh and Mr. Aditya Raj Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% **16.11.2016**

The revenue is aggrieved by the ITAT's order rejecting its appeal. The CIT (A) had quashed the assessment which was based upon a notice issued under Section 147/148.

The assessee had filed its return for 2004-05 which was completed after scrutiny. (Subsequently, a notice under Section 147/148 was issued on 1.11.2010. The re-assessment which followed was quashed by the CIT (A) on the ground that in re-assessment proceedings further notice under Section 143 (2) had never been issued to the assessee.) The CIT (A) deleted the addition made by the AO in the reassessment proceedings and held that there was no permanent establishment in terms of the Indo-US DTAA (Double Taxation Avoidance Agreement) and that the assessee was not liable to tax in India. That order attained finality.

The ITAT followed its order for 2001-02 and held that on the facts of the case it could not be said that the assessee had appealed.

As far as the question of reopening was concerned, the ITAT upheld the CIT (A)'s order and concluded that there was no failure on the part of the assessee to make the disclosure and that it had contended on the basis of all the materials made available in the course of the original assessment proceedings that it had no P.E. In the circumstances, the question of non-disclosure of material facts did not arise. Also the AO could not have premised the reassessment notice upon existing materials without the aid of tangible evidence - a necessary pre-requisite for invoking jurisdiction under Section 147/148.

Having regard to the concurrent findings which are factual and also upon being satisfied with the materials on record, the Court is of the opinion that no substantial question of law arises.

The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

NOVEMBER 16, 2016
/vikas/