



THE HIGH COURT OF DELHI AT NEW DELHI

ITA No. 311/2003

Judgment delivered on: 17.02.2004

M/S RALSON (I) LTD

...Appellant

- versus -

COMMISSIONER OF INCOME TAX, DELHI-V

...Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Anoop Sharma with Mr R. Malik and Mr M. Husain
For Respondent : Ms Prem Lata Bansal

CORAM:-

**HON'BLE MR JUSTICE B.C. PATEL, CHIEF JUSTICE
HON'BLE MR. JUSTICE BADAR DURREZ AHMED**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

} no

CHIEF JUSTICE (ORAL)

1. The present appeal has been preferred by the Assessee against the order made by the ITAT, Delhi, Bench "C", in ITA No.2046/Del/97 for the Assessment Year 1993-94. Paras 11 and 12 of the said judgment and/or order read as under:

"11. After considering rival submissions, we are of the view that there is no merit whatsoever in the arguments advanced by the Id. Counsel on



behalf of the assessee. Both the tax authorities have highlighted relevant facts of the case and which leave us in no doubt that the amount shown in the name of Shri Suresh in the diary represented cash payments, which did not find a place in the assessee's books of account. The provisions of Section 69 C have been rightly invoked and we, therefore, uphold the same.

12. Coming to the alternative submission, this apparently has been taken up before us for the first time and in the interest of justice, we do not propose to shut out the assessee but on the other hand showing fairness to the Revenue as well, we remit the matter back to the file of the CIT (A) to be decided denovo on merits after giving reasonable opportunity to both the parties."

2. The appellant is aggrieved by the opening part of para 12, as a result of which the matter has been remanded to CIT (Appeals) for a fresh decision. According to learned counsel, it was open for the Tribunal to decide the alternative submission itself as the matter has been argued before the CIT (Appeals) and not raised before the Tribunal for the first time. Our attention was drawn to the order made by the CIT (Appeals) which is at page 60 of the Paper Book. In para 20 (should be para 23) thereof, the contention of the appellant is noted as under:-

"It was argued that what is written in the diary are projected purchases. An alternate ground taken was that if these are unvouched purchases, then, such



purchases have to be allowed as a deduction.”

3. Therefore, it is very clear that the alternative submission was made before the CIT (Appeals) and the Tribunal is not right in stating that the same had been taken up before the Tribunal for the first time.

4. We find no question of law as such arises. But, as the finding recorded by the Tribunal, to the effect that the said submission was raised before it for the first time, is patently wrong, we direct the Tribunal to examine the matter and decide the issue with regard to the alternative submission also, after considering the records including assessment order and the appellate order passed by the CIT (Appeals), in accordance with law.

The appeal is accordingly disposed of.

Belawati
CHIEF JUSTICE

Badar Durrez Ahmed
BADAR DURREZ AHMED, J

February , 2004
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