



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 228/2006

COMMISSIONER OF INCOME TAX DEL Appellant

Through Mrs. P.L. Bansal with
Mr. Vishnu Sharma

versus

M/S BHIWANI SYNTHETICS LTD. Respondent

Through

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

04.09.2006

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The Revenue is aggrieved by an order dated 13th June, 2005 passed by the Income Tax Appellate Tribunal, Delhi Bench 'D' in ITA No.1765/2001 relevant for the assessment year 1994-95.

The Assessee filed its return of income on 30th November, 1994 declaring a loss. It appears that the return was not signed by the



Managing Director or the Director of the Assessee, which is a company.

The return was signed by the General Manager (Finance) and the Company Secretary of the Assessee.

The Assessing Officer, in view of Section 140 (c) of the Income Tax Act, 1961 came to the conclusion that since the return was not filed by the Managing Director or the Director, it was non est.

It may be noted that at no point of time there was any contest on behalf of the Assessee that this return was not its return or was not an authorised return or that the General Manager (Finance) and the Company Secretary did not have any authority to file the return. On the contrary, there was a power of attorney given by the company in favour of the General Manager (Finance) to sign the return.

Feeling aggrieved by the view taken by the Assessing Officer, the Assessee preferred an appeal before the Commissioner of Income Tax (Appeals) who was of the opinion that the defect was a curable defect and an opportunity ought to have been given to the Assessee to rectify



it. He, accordingly, directed the Assessing Officer to give such an opportunity to the Assessee. He also noted the contention of the Assessee that the Assessing Officer ought to have given an opportunity to cure the defect under Section 139(8) of the Act.

Against the order passed by the CIT (A), the Revenue preferred an appeal before the Tribunal in which it was contended that the appeal filed by the Assessee before the CIT (A) was not maintainable and that the defect was not a curable defect.

The Tribunal dismissed the appeal of the Revenue. In other words, the direction given by the CIT (A) to the Assessing Officer to give an opportunity to the Assessee to have the return signed by the Managing Director or the Director of the Assessee stood affirmed. Learned counsel for the Revenue has raised the same contentions before us as were raised before the Tribunal.

We are of the view that on the facts of this case, since there is nothing on record to suggest that the Assessee has disowned the return



that was signed by the General Manager (Finance) of the Assessee and on the contrary, a power of attorney was being given by the Assessee to its General Manager (Finance) for signing the return, it would have been appropriate if an opportunity had been granted to the Assessee to have the return signed by the Managing Director or its Director in accordance with the directions given by the CIT (A). There is nothing to suggest that any prejudice will be caused to the Revenue if this direction is complied with.

Given the facts of this case, we are of the view that no substantial question of law arises for our consideration.

Dismissed.


MADAN B. LOKUR, J


VIPIN SANGHI, J

SEPTEMBER 04, 2006
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