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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ITA 342/2007**

COMMISSIONER OF INCOME TAX Appellant
Through Ms. P.L. Bansal, Advocate

versus

HITECH FLEXOTEXT P.LTD. Respondent
Through Mr. Anil Sharma, Advocate

CORAM:**HON'BLE MR. JUSTICE MADAN B. LOKUR****HON'BLE MR. JUSTICE DR. S. MURALIDHAR****ORDER**

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07.08.2007

The Revenue is aggrieved by an order dated 30th June, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench 'E' in Misc. Application No. 136/Del/2006 relevant for the assessment year 1990-91.

By way of a preliminary objection, learned counsel for the Assessee submits that an appeal under Section 260A(1) of the Income Tax Act, 1961 is



not maintainable against an order passed in a miscellaneous applicati

However, we find that by virtue of Section 260A(2) of the Income Tax, 1961 an appeal would be maintainable against any order which would, in our opinion, include an order passed in a miscellaneous application. This is, of course, subject to a substantial question of law being raised by the Appellant. The preliminary objection raised by learned counsel for the Assessee is, therefore, rejected.

Admit.

After hearing learned counsel for the parties, we are of the view that the following question of law arises for our consideration: -

“Whether the Income Tax Appellate Tribunal was correct in law in rejecting the application of the Revenue due to non production of the record before the Tribunal?”

A return was filed by the Assessee on 13th November, 1990 and the Assessing Officer issued a notice to the Assessee under Section 143 (2) of the Income Tax Act on 18th February, 1991.



The assessment order records that a date of hearing was scheduled 29th May, 1992. On this basis, the Assessee contended before the Tribunal as well as before us that since the returnable date of the notice was beyond the period of limitation, the notice was invalid.

We do not find any substance in this contention. The Assessing Officer had issued a notice on 18th February, 1991. It was received by the Assessee on 19th February, 1991 and the Assessee sent a response on the date of hearing, that is, 27th February, 1991. The date of 29th May, 1992 is with reference to some other notice and not the one dated 18th February, 1991.

In so far as the Tribunal is concerned, it appears that the Revenue failed to produce a copy of the notice dated 18th February, 1991 before it. It was produced before us by learned counsel on 21st May, 2007 whereupon notice was issued to the Assessee. Today, the record has been produced before us again by learned counsel for the Revenue and we have gone through the notice and find that it was served on 19th February, 1991 and the date of hearing was fixed as 27th February, 1991. Clearly, the date of hearing



of 29th May, 1992 mentioned in the assessment order is in respect of so...
other notice that seems to have been issued to the Assessee.

In response to the notice dated 18th February, 1991, the Assessee sent a reply dated 27th February, 1991 in which an adjournment was prayed for for some time in the second week of March, 1991 since the Chartered Accountant of the Assessee was out of station. This reply was also not produced before the Tribunal but has now been produced before us by learned counsel for the Revenue.

The Tribunal has proceeded on the basis that since neither the notice nor the response of the Assessee was produced and one of the dates of hearing was 29th May, 1992, the notice issued by the Revenue under Section 143 (2) of the Act was beyond the period of limitation. We find this basis to be factually incorrect having seen the record.

Under the circumstances, we answer the question in negative, in favour of the Revenue and against the Assessee. We remit the matter back to the Tribunal for consideration on merits since it did not go into the merits of the



matter while dismissing the application of the Revenue primarily on ground of non-production of record.

The parties will appear before the Tribunal on 10th September, 2007 for directions. The Tribunal will fix the matter for hearing the application preferred by the Revenue on merits.

The appeal is disposed of.

A handwritten signature in black ink, appearing to read 'Madan Lokur'.

MADAN B. LOKUR, J

A handwritten signature in black ink, appearing to read 'S. Muralidhar'.

S. MURALIDHAR, J

AUGUST 07, 2007

raj