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% 03.10.2008

Present: Mr Ajay Vohra with Ms Kavita Jha and Mr Sriram  
Krishna for the Appellant.  
Ms Prem Lata Bansal for the Respondent.

+ CM 14506/2008 in ITA 197/2008

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When we had already directed the assessee to file copies of the orders pursuant to the order of the Tribunal, there is no reason as to why the assessee / appellant has filed this application seeking leave to file those very documents which we had already directed them to file.

In these circumstances, the learned counsel for the appellant/ assessee seeks permission to withdraw the application. We permit the withdrawal of the application. However, we take on record the documents which have been filed along with the said application.

This application stands disposed of accordingly.

ITA 197/2008

Mr Vohra, who appears on behalf of the appellant, states that he is not pressing this appeal with respect to the exercise of powers



under Section 263 by the Commissioner of Income Tax pertaining to this year (assessment year 2001-2002). He submits that pursuant to the order passed by the Commissioner Income Tax on 17.03.2006 in exercise of the powers under Section 263 of the said Act, the Assessing Officer has already passed an order. The Commissioner of Income Tax (Appeals) has also disposed of the appeal therefrom and the matter is now pending before the Income Tax Appellate Tribunal. He submits that with regard to merits, he shall make his submissions before the Tribunal but insofar as the assumption of jurisdiction under Section 263 is concerned, he is not pressing this appeal in the peculiar facts and circumstances of this case pertaining to this year.

It shall be open to the assessee to raise issues on merits before the Tribunal in the pending appeal. In considering the same, the Tribunal shall not be constrained by any observations made by it in the impugned order on merits. It is made clear that insofar as the question of assumption of jurisdiction under Section 263 of the said



Act is concerned, the issue stands closed. We also make is clear that we have not expressed any opinion on the merits of the matter.

The appeal stands disposed of accordingly.

*Badar Durrez Ahmed*  
BADAR DURREZ AHMED, J

*Rajiv Shakti*  
RAJIV SHAKDHER, J

October 03, 2008  
SR