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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 634/2008

CIT

Through: Appellant
Ms. P.L. Bansal with
Mr. Sanjeev Rajpal &
Mr. M.P. Gupta, Advs.

versus

ANITA JAIN

Through: Respondent
Mr. Santosh Aggarwal with
Mr. Sriram Krishan, Advs.

WITH

ITA 635/2008

CIT

Through: Appellant
Ms. P.L. Bansal with
Mr. Sanjeev Rajpal &
Mr. M.P. Gupta, Advs.

versus

ANITA JAIN

Through: Respondent
Mr. Santosh Aggarwal with
Mr. Sriram Krishan, Advs.

WITH

ITA 935/2008

CIT

Through: Appellant
Ms. P.L. Bansal with
Mr. Sanjeev Rajpal &
Mr. M.P. Gupta, Advs.

versus

ANITA JAIN

Through: Respondent
Mr. Santosh Aggarwal with
Mr. Sriram Krishan, Advs.



CORAM:
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE RAJIV SHAKDHER

% ORDER
21.01.2009

These three Appeals have been filed by the CIT(A), Delhi-XI under Section 260-A of the Income-Tax Act, 1961 ('IT Act' for short), for the Assessment Years (AYs) 1999-2000, 2000-2001 and 2001-2002. With regard to the Assessee's claim for expenses for Assessment Year 1999-2000 75 per cent thereof had been disallowed primarily on the ground that although the Assessee was doing export business upto the year 1998, business had closed down in the three subject Assessment Years. The Assessee had disclosed that over a period of 14 years foreign exchange to the tune of Rupees 61.07 crores had been earned which entitled the Assessee to Past Performance Quota (PPQ) on which there was a earning of Rupees 1,05,716/- for its transfer which was duly offered for taxation. It had also been brought out that for Assessment Years 2002-2003, 2003-2004 and 2004-2005 a large turnover could be achieved only on account of continued business.

The ITAT has concluded on facts that the Assessee was maintaining her office, retaining staff and was engaged in the business of export and, therefore, it was not a case where she had closed down the business. The ITAT was of the view that the



vacation in June, 1998 of the lease premises could not logically lead to the conclusion that the business had been closed down and that the sale of PPQ was very much a business activity. Similarly, selling of stock could not lead to this inference. The ITAT has also noted that the expenditure in these years has substantially reduced since there was a lull in the business. Rather than a closure of business, the ITAT was of the opinion that it was a case of dormancy of business activity. Furthermore, the ITAT noted that allowance of 25 per cent of the expenses, as well as allowance of depreciation, is indicative only of continued business.

Ms. Bansal, learned counsel for the Revenue, has drawn our attention to the observation in *CIT, Punjab -vs- Lahore Electric Supply Co. Ltd.*, [1966] 60 ITR 1 to the effect that the "mere fact that the company had not gone into liquidation would not establish that it had the intention to do business". This submission loses sight of the observations made at page 5 which clearly indicate that the Court came to the conclusion that the Assessee had closed business because it had not '*established an intention to resume it*'. Such is not the circumstance obtaining in the present case. This case has been applied in *CIT -vs- Vellore Electric Corporation Ltd.*, [2000] 243 ITR-529 where it has been pithily noted that maintenance and establishment is



the indication of intention to resume business. In *Karsondas Ranchhoddass -vs- CIT, Bombay*, [1972] 83 ITR 1 it was noted that there were two periods of activity before and after the interregnum or period of inactivity which was indicative that the business was nevertheless continued. We are in complete agreement with the view taken by the ITAT that the present case is an example of a lull in business and not cessation in business. Therefore, no substantial question of law arises for consideration.

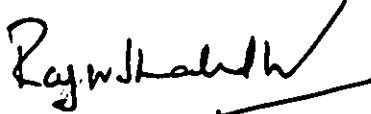
The other issue which has been raised before us pertains to Section 22 of the IT Act with regard to premises No.523-524, World Trade Centre, Barakhamba Road, New Delhi. The ITAT notes that these premises were used by M/s. Vama Industries as well as the Assessee and, therefore, there was no justification in estimating the notional rental value. The ITAT has observed that the Assessing Officer had made no investigation as to the portion of the premises (if any) that had been used by the other firm, namely, M/s. Vama Industries, of which the Assessee was also a partner; as also that the Department had allowed the expenditure in earlier years. The ITAT held that as long as Assessee was carrying out her business from the said premises the expenses incurred cannot be disallowed merely because the Assessee permitted Vama Industries to carry on the business



from the said premises. We are in agreement with the ITAT that the additions made on this account had been correctly deleted. In this regard, we are fortified by the observations that a partnership has no existence independent of its business, as enunciated in *CIT -vs- H.S. Singhal*, [2002] 253 ITR 653, after a thorough analysis of the precedents.

No substantial question of law arises for consideration.


VIKRAMAJIT SEN, J.


RAJIV SHAKDHER, J.

JANUARY 21, 2009
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