



* **THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on : 02.12.2008

+ **ITA 395/2008**

THE COMMISSIONER OF INCOME TAX-XIII

....APPELLANT

- versus -

TANIYA CONSTRUCTION CO

..... RESPONDENT

Advocates who appeared in this case:

For the Appellant : Mr. Sanjeev Sabharwal

For the Respondent :

CORAM :-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE RAJIV SHAKDHER

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

BADAR DURREZ AHMED, J (ORAL)

1. In this appeal against the order passed by the Tribunal on 27.7.2007 relating to assessment year 2001-02. The only question sought to be raised by the Revenue pertains to the interpretation to



be given to Section 80 HHB(3)(ia). The contention of the Revenue is that unless and until the certificate in the prescribed form from the accountant and the audit report are not filed alongwith the return, the benefit of Section 80HHB would not be available to the assessee. It is an admitted position that the certificate was filed alongwith the return but the audit report was filed subsequently, during the course of the assessment proceedings but, prior to the framing of the assessment. The Tribunal decided in favour of the assessee after concluding that the provisions of Section 80HHB(3)(ia) were directory and not mandatory.

2. Today itself, in the case of *CIT vs Contimeters Electricals Pvt Ltd* we have construed a similar provision as occurring in Section 80 (IA)(7) of the said Act and held the same to be directory and not mandatory. We have relied upon various decisions of different Courts as set out in the order passed in that matter. The decisions of the other Courts had interpreted the provisions of Section 80J(6A) of the said Act which are in similar terms to the present provisions. Thus, following the said decision we do not find any infirmity in the order passed by the Tribunal.



3. In the present case the Tribunal concluded that the assessee made substantial compliance by filing Form 10CCA alongwith the return. The report in Form 10CCA was also filed during the course of assessment proceedings and according to the Tribunal, this amounted to compliance with the provisions of Section 80HHB. This view taken by the Tribunal, in our opinion, is correct. No substantial question of law arises for our consideration. The appeal is dismissed.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

December 02, 2008
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