



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ WP (C) No. 13431 of 2009

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Dictated on: November 26, 2009

M/s. Havells India Ltd.

. . . Appellant

through :

Ms. Kavita Jha with
Mr. Sriram Krishna, Advocates

VERSUS

Deputy Commissioner of Income Tax

. . . Respondent

through :

Mr. Sanjeev Sabharwal, Advocate

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

1. Rule D.B.
2. Since pure question of law is involved, which is to be decided in this writ petition, learned counsel for the respondent states that no counter affidavit is required to be filed and both the parties are ready to argue the matter finally at this stage itself.

Accordingly, we have heard the learned counsel for the parties.



to as the 'Act') whereby the assessment proceedings relating to assessment year 2003-04 are sought to be reopened. It so happened that the petitioner had filed original return of income declaring income of Rs.12,73,43,425/- on 19.11.2003. However, in this return the petitioner had omitted to claim depreciation admissible under Section 32(1)(iia) of the Act on account of substantial expansion undertaken by it. Under these circumstances, the petitioner filed revised return on 30.10.2004 claiming the said depreciation in the sum of Rs.28,24,676/-. Along with this revised return, the petitioner also filed details of plant and machinery installed and increase in installed capacity of production in prescribed Form No. 3AA along with report of the Chartered Accountant dated 28.10.2004. Assessment was made and the petitioner was allowed depreciation. However, in the notice issued under Section 148 of the Act on 26.8.2008, the assessment is sought to be reopened on the ground that the aforesaid depreciation was wrongly allowed. The precise reasons which are furnished in this behalf are as under :-

"Return of Income for AY 2003-04 was filed on 19.11.2003 at an income of Rs.12,54,25,850/-. Later the return was revised on 30-10-2004 at an income of Rs.12,26,37,472/-. The revised return was processed u/s 143(1) on 30.3.2005 determining a refund of Rs.20,73,160/-.

From the perusal of assessment record it has been revealed that the assessee had claimed and allowed an additional depreciation of Rs.28,24,676/- in its revised return of income. The claim of the assessee for additional depreciation is not proper and the same is not available to the assessee. As per section 32(1)(iia) of the Act, the additional depreciation is available only if the assessee furnished the report of an accountant in Form 3AA alongwith return of



I, therefore, have reasons to believe that incor deduction, on account of additional depreciation amounting Rs.28,24,676/-, had been allowed to the assessee and I am satisfied that this is a fit case for issue of notice u/s 148 of the Income Tax Act, 1961.”

4. The petitioner submitted detailed objections to the aforesaid reasons, *inter alia*, contending that the initiation of re-assessment proceedings was void *ab initio*; and the petitioner was well within the legal framework to claim that depreciation under Section 32(1)(iia) of the Act by filing revised return and the detailed questionnaire was beyond the scope of re-assessment. These objections were considered and rejected by the Deputy Commissioner of Income Tax vide impugned order dated 9.11.2009.
5. We find from the said order that the Assessing Officer (AO) has mentioned that at the time of initiation of proceedings under Section 147 of the Act, the assessee was required to file audit report along with the return of income, which was not done and, therefore, the assessee was not entitled to the additional depreciation under the aforesaid provision.

This reason for re-opening the assessment is clearly erroneous and not warranted under the law.

6. From the facts noted above, it is clear that the assessee had filed the revised return within the stipulated period. It is also an admitted fact that along with this revised return claiming additional depreciation,



the details of the increase in installed capacity of productic
was supplemented by the report of the Chartered Accountant dated
28.10.2004 as well.

7. In various judgments of this Court as well as other High Courts, it has been laid down that the requirement of filing of audit reports/ circulars/declaration along with the return of income is not mandatory and even if is filed subsequently, it has to be considered and on that basis the benefit of particular provision is to be accorded to the assessee. Some of the judgments laying down the principle are as under :-

- (a) *Contimeters Electricals (P) Ltd*
178 Taxman 422 = 224 CTR 366 (Del)
- (b) *CIT v. Berger Paints (India) Limited*
254 ITR 503 (Cal.)
- (c) *CIT v. Punjab Financial Corporation*
254 ITR 6 (P&H) (FB)
- (d) *CIT v. Shiva Rice & Dal Mills*
273 ITR 265 (P&H)
- (e) *CIT v. Gupta Fabs*
274 ITR 620 (P&H)
- (f) *CIT v. Panama Chemical Works*
245 ITR 684 (MP)
- (g) *CIT v. Hardodass Agarwalla Trust*
198 ITR 511 (Cal.)
- (h) *CIT v. Rai Bahadur Bissesswarlal Motilal Malwasie Trust*
195 ITR 825 (Cal.)

8. In the present case, as noted above, the requisite documents were filed along with revised return and filing of revised return was well



within time. In these circumstances, we find no reason for re
of the assessment entirely made in the first instance.

9. Rule is made absolute. Notice dated 26.8.2008 issued under Section 148 of the Act and the order dated 9.11.2009 passed by the Deputy Commissioner of Income Tax rejecting the objections raised by the petitioner are hereby set aside. As a consequence, the questionnaire sent by the Assessing Officer to the petitioner also stands quashed.

No costs.

A handwritten signature in black ink, appearing to read 'A.K. Sikri'.

(A.K. SIKRI)
JUDGE

A handwritten signature in black ink, appearing to read 'Siddharth Mridul'.

(SIDDHARTH MRIDUL)
JUDGE

November 26, 2009
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