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% 21.12.2009

Present: Mr. R. Santhamani with Mr. A.P. Sinha for the appellant.
Mr. Sanjeev Sabharwal for the respondent.

+ CM No. 18709/2009

For the reasons stated in this application, the delay in filing the appeal is condoned and the application is disposed of.

ITA No. 1412/2009 & CM No. 18708/2009

In respect of the assessment year 2001-02, after the assessment was complete, the Commissioner of Income Tax-II, Delhi passed orders under Section 263 of the Income Tax Act, 1961 on 16.3.2006 as per which the assessment order of the Assessing Officer (AO) passed under Section 143(2) of the Act on 26.2.2004 was set aside with a view to pass fresh order after giving opportunity of being heard to the assessee. The AO passed fresh orders making certain additions. The appellant herein challenged the orders dated 16.3.2006 passed by the CIT in exercise of his powers under Section 263 of the Act by preferring an appeal before the Tribunal.



In the meantime, on remand of the matter to the AO, tl

passed fresh assessment orders, which were also challenged by the appellant and the matter carried up to the Tribunal. By common judgment dated 27.2.2009, both these appeals, along with two other appeals of the appellant, have been disposed of. Insofar as the appeal of the appellant challenging the exercise of jurisdiction under Section 263 of the Act is concerned, the same is dismissed. However, on merits, the additions made are deleted. The appellant has challenged the order of the Tribunal whereby his appeal challenging the order dated 16.3.2006 by the CIT under Section 263 of the Act has been dismissed. This issue, in view of the aforesaid reasons, regarding assumption of jurisdiction, in any case has become infructuous. Moreover, even on merits, we find that the CIT had rightly exercised the jurisdiction under Section 263 of the Act. We may only reproduce the observations of the ITAT in this behalf contained in para 12 of the impugned judgment :-

"12. We have considered the facts of the case and rival submissions. It is a fact on record that the AO had made enquiry about the claim of deduction of about Rs.2.19 crore, arising on account of reduction in price of cylinders. The assessee had also shown two amounts to be recoverable from the excise department and sales-tax department, which were not enquired into by the AO at all. Further, the assessee had shown certain amount of interest as loan and advance. This fact itself should have prompted the AO to make enquiry to



ascertain the nature of amount and its taxability, which was not done. The assessee had rented some property, the income from which was computed under the head "income from house property". The deduction of depreciation was also allowed on this property without making any enquiries. According to us, all these three points cried for making enquiries at the stage of assessment, which were not even initiated. Such a failure by the AO renders the order to be erroneous and prejudicial to the interest of revenue. Therefore, we do not find any error in the order of the learned CIT in this manner."

No question of law, therefore, arises for consideration in this appeal.

Dismissed.

A.K. Sikri
A.K. SIKRI

Siddharth Mridul
SIDDHARTH MRIDUL

December 21, 2009
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