



% 30.10.2009

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Present: Mr. Subhash Bansal, Adv. for the appellant-Revenue.

+ ITA No. 1086/2009

The Revenue had filed the appeal against the order of CIT(A), which proceedings arose out of irregularity in assessment made by the Assessing Officer under Section 143(3) of the Income Tax Act, 1961. During the pendency of the appeal before the CIT(A) itself, a search had taken place on 21.03.2007 and therefore, the assessment proceedings under Section 143(3) of the Act for the assessment year, which included assessment year in question as well, commenced. On this basis, the counsel for the Revenue himself made a statement before the Income Tax Appellate Tribunal that the regular assessment proceedings would abate and therefore, the appeal filed by the Revenue had become infructuous. Accepting this contention of the Revenue, appeal was dismissed as infructuous by the Tribunal.

It is strange that when the contention of the Revenue itself was accepted and appeal was dismissed as infructuous, Revenue feels aggrieved against such an order and has come up in appeal. Therefore, this appeal is totally misconceived and dismissed as not



maintainable. We may note that Mr. Bansal contended that plea of the D.R. of the Department before the Tribunal was not correct. Even in that situation, the remedy for the Department is to move an appropriate application before the Tribunal.


A.K. SIKRI, J.


SIDDHARTH MRIDUL, J.

October 30, 2009

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