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THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 08.04.2010

+ **W.P.(C) 2305/2010 & CM 4638/2010**

XEROX MEDICORP LTD ... Appellant

- versus -

DEPUTY COMMISSIONER OF INCOME TAX AND ORS

... Respondent

And

+ **W.P.(C) 2307/2010 & CM 4642/2010**

XEROX MEDICORP LTD ... Appellant

- versus -

DEPUTY COMMISSIONER OF INCOME TAX AND ORS

... Respondent

Advocates who appeared in these cases:

For the Petitioner : Mr Ajay Vohra, Ms Kavita Jha and Ms Akansha Aggarwal

For the Respondent : Mr Sanjeev Sabharwal

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V.K. JAIN

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

BADAR DURREZ AHMED, J (ORAL)

CM 4639/2010 & CM 4643/2010 (Exemption)



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W.P.(C) 2305/2010 & W.P.(C) 2307/2010

1. These writ petitions are taken up together inasmuch as identical issues arise for consideration. The writ petitions relate to assessment year 2002-03 and 2004-05. In both cases, assessments had been completed under Section 143(3) of the Income Tax Act, 1961. However, subsequent thereto, by separate notices, both dated 30.03.2009 the Revenue sought to reopen the assessment under Sections 147/148 of the said Act.

2. The assessee sought reasons for reopening. The same were supplied and the assessee preferred objections thereto in both cases. The assessee, thereafter, awaited the passing of the speaking orders in terms of the decision of the Supreme Court in the case of **GKN Driveshafts (India) Ltd. v. ITO 259 ITR 19 (SC)**. However, the same was not forthcoming and the Assessing Officer proceeded with the assessment proceedings and framed the assessment orders in both cases on 31.12.2009.

3. The petitioner/assessee is before us as it is aggrieved by the fact that the Assessing Officer did not follow the procedure laid down by the Supreme Court in **GKN Driveshafts (supra)** inasmuch as the Assessing Officer did not pass any speaking order prior to proceeding with the framing of assessment. The learned counsel for the petitioner placed reliance on decision of this Court in the case of **Kamlesh Sharma v. B.L. Meena, ITO 287 ITR 337 (Del)** wherein, under virtually identical circumstances, this Court set-aside the assessment order and directed the Assessing Officer to consider the objection preferred by the assessee and, thereafter, pass a speaking order prior to proceeding with the framing of assessment



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4. We have heard counsel for the parties and we are of the view that the position in law is very clear as laid down by the Supreme Court in *GKN Driveshafts (supra)*, wherein it has been indicated that the framing of the assessment has to proceed only after passing of the speaking order. In the present cases, no speaking orders have been passed and the objections have only been taken care of in the assessment orders. Consequently, the only course left to us is to direct that the assessment orders be set-aside and that the Assessing Officer be directed to consider the objections filed by the assessee in both cases and pass separate speaking orders dealing with the said objections. Thereafter, he may proceed with the framing of the assessments. It is ordered accordingly. The assessee will not raise the question of limitation.

5. The writ petitions and pending applications stand disposed of.


BADAR DURREZ AHMED, J


V.K. JAIN, J

APRIL 08, 2010

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