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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ITA 623/2008**

ASTRA HOUSING & INVESTMENT P. LTD. Appellant
 Through: Mr. O.S. Bajpai, Sr. Advocate with
 Mr. B.K. Singh, Advocate

versus

COMMISSIONER OF INCOME TAX, DELHI-I Respondent
 Through: Ms. Prem Lata Bansal, Advocate.

% DATE OF DECISION: September 01, 2010

CORAM:**HON'BLE MR. JUSTICE A.K. SIKRI****HON'BLE MS. JUSTICE REVA KHETRAPAL**

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

A.K. SIKRI, J. (ORAL)**CM No.6974/2008**

There is a delay of 842 days in filing the appeal. This application is filed for condonation of delay. It is stated in the application that Mr. Rajiv Bhatia, Director of the appellant Company was looking after the affairs of the Company and he was responsible for filing the present appeal. However, he was suffering from adenocarcinoma (a type of cancer in the large intestine) for a period from 21.07.2005 to 02.04.2008. Since he was seriously ill and it was he who was pursuing the proceedings, in his absence nobody else could attend to the matter,



Bhatia are stated. Having regard to this explanation given in the application, we condone the delay. However, as the delay is also of 842 days, we are of the opinion that it should be condoned subject to costs. We accordingly condone the delay, subject to payment of ₹ 5,000/- as costs.

Application stands disposed of.

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1. A search and seizure operation was conducted at the premises of the appellant Company as well as residential premises of Shri Rajiv Bhatia, its Director on 04.04.2000. During the course of search, certain documents were seized by the Department. Based thereupon, a notice under Section 158BC of the Income-Tax Act for the block period, i.e., assessment year 1991 to 2001-02 was issued to the appellant Company for filing the return for the said block period. The appellant/assessee filed the return. The assessing officer completed the assessment under Section 158BC of the Act whereby he made addition to the extent of ₹ 14,77,410/-. This addition pertained to the documents Annexure A-2, A-3 and Annexure A-10 seized during the course of search. It is submitted that total entries in Annexure A-2 and A-3 were of ₹ 51,49,612/- and the appellant was asked by the AO to explain the above payments made by the appellant in these entries. Three entries amounting to ₹ 30,69,868/- were repeated/duplicated and details thereof were furnished by the appellant which was accepted by the AO. For the



appellant which was also accepted by the AO. As to the remaining sum of ₹ 11,19,832/- it was explained that it was spent by the Director Shri Rajiv Bhatia from company's imprest account with him. Explanation regarding ₹ 11,19,832/- was not accepted. This addition related to the Annexure A-2 and A-3.

2. Similarly the appellant was asked by the AO to explain the entries amounting to ₹ 11,10,709/- made in Annexure A-10 which was seized during the course of search. It was explained that out of ₹ 11,10,709/-, entries amounting to ₹ 1,61,889/- were recorded twice in the Annexure A-10 itself. Explanation with regard to ₹ 1,61,889/- was accepted. As to the remaining amount of ₹ 9,48,820/-, it was explained that a sum of ₹ 5,91,243/- was already found recorded in the books of account of the appellant. This was also accepted. As to the remaining sum of ₹ 3,57,577 /-, it was explained that this amount was spent by Shri Rajiv Bhatia, Director from company's imprest account with him. The AO did not accept the explanation with regard to ₹ 3,55,577 /-. In this manner, based on the aforesaid documents, addition to the extent of ₹ 14,77,410/- was made, as according to the assessing officer, entries to that extent in those documents could not be explained by the assessee.

3. Aggrieved by this assessment order, the assessee filed appeal before the CIT, which was, however, dismissed and the additions were confirmed by the CIT(A). Further appeal was preferred before the Income-Tax Appellate Tribunal, which has met the same fate as the



4. We may point out at this stage that the explanation furnished by the appellant/assessee qua the aforesaid addition was that an amount of ₹ 25 lakhs was pending in the name of Mr. Rajiv Bhatia, its Director, being “imprest money”, which was to be spent by the Director on certain projects. This explanation has not been accepted by any of the authorities below. The Income-Tax Appellate Tribunal has gone into this issue in much greater details. The discussion is contained in para 9 and 10 of the impugned order rejecting the aforesaid plea of the appellant/assessee. We also find that the Tribunal has even reproduced the entries in the accounts and commented upon them by giving its reasons as to why such an explanation of the assessee was an afterthought. It is, *inter alia*, observed by the Tribunal that in the absence of furnishing account in respect of amount earlier given to the Director, there was no justification to expend it by the Company. For example, when total sum of ₹ 2,65,000/- was already advanced upto 26.05.1997, why another amount of ₹ 1,75,000/- was advanced on 14th September without taking the account of the earlier amount. Similarly, upto 7th October, 1997, a sum of ₹ 9,40,000/- was given to the Director as imprest and without taking account of earlier amount why further sum of ₹ 10,00,000/- was advanced on 21st January. According to the Tribunal, when further advance was taken, it meant that earlier amount paid as imprest money



representative of the assessee could not furnish any satisfactory explanation explaining the above aspects.

5. We are of the opinion that all the relevant aspects were considered by all the authorities below. No substantial question of law arises. This appeal is accordingly dismissed.

A.K. Sikri
A.K. SIKRI, J.

Reva Khetrapal
REVA KHETRAPAL, J.

SEPTEMBER 01, 2010
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