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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 14<sup>th</sup> December, 2010

+ ITA No.1417/2009

COMMISSIONER OF INCOME TAX ..... Appellant  
Through: Ms.Prem Lata Bansal, Advocate

versus

BUSINESS ENGG. AND SOFTWARE TECHNOLOGIES LTD.  
..... Respondent  
Through: Dr.Rakesh Gupta with Mr.Ashwani  
Taneja & Ms.Poonam Ahuja,  
Advocates

**CORAM:**

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

**HON'BLE MR. JUSTICE SURESH KAIT**

1. Whether the 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 the Digest?

**A.K.SIKRI, J. (Oral)**

This appeal pertains to the Assessment Year 2001-2002. The issue which is raised by the Revenue/Appellant is whether the Assessing Officer was right in determining the Annual Letting Value of property bearing No. A-84, Sector-58, Noida and made the addition under the provisions of Section 22 and 23 of the Income Tax Act. The Assessing Officer was of the view that part of this property was let out to M/s Polar Software Limited and that tenant vacated the premises in June, 1999. The Assessing Officer took the view that the property kept lying vacant thereafter in so far as the



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Assessment Year in question is concerned and on that basis, he determined the Annual Letting Value under Section 23(1) of the Act and made an addition to the tune of Rs.9,23,328/- and the aforesaid amount was charged to tax under the head "Income From House Property". The Tribunal has deleted the addition by relying upon the order of the CIT(A) passed in the case of the same assessee in respect of Assessment Years 2002-2003 and 2004 2005.

Learned counsel for the respondent has produced the copy of the order passed by the CIT(A) for the Assessment Year 2002-2003 and on that basis, he argues that a categorical finding of fact was recorded that after the property was vacated by the aforesaid tenant, it was to be used by the assessee itself for its own business purposes. He further submits that the martial of evidence which was relied upon and accepted by the CIT(A) would clearly demonstrate that even in the Assessment Year 2001-2002, the property was used for business purposes.

After going through the said order dated 28.02.2007 passed by the CIT(A) in respect of Assessment Year 2002-2003, we find substance in the submission of learned counsel for the respondent/assessee. The categorical finding is arrived at by the CIT(A) to the effect that the tenant had vacated the premises in the month of June, 1999 and the possession was handed over to the assessee then and there. This finding was arrived at on the basis



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of the statement of the tenant who was summoned and his statement was recorded. In order to demonstrate that after the premises were vacated by the said tenant in June, 1999, it is the assessee who had used the premises and was in continuous use of the premises for business purposes. The assessee had furnished various documents which pertained to the period 1998-1999 till 2001-2002. The CIT(A) has discussed and relied upon all these documents to arrive at finding that premises were being used for business purposes by the assessee in the said Assessment Year 2002-2003. Since the documents which are relied upon pertained to the Assessment Year 2001-2002 as well, this finding would clearly be relevant for this Assessment Year also. We may reproduce the following discussion of the CIT(A) in the said order which would bring to fore the conclusion arrived at by us:-

“I have carefully examined the issue and also considered the submissions made by the Learned AR as well as the reasons given by the AO in the assessment order. I have also perused the relevant material placed on record. In view of the rival contentions and to ascertain the correct position, notice u/s 133(6) of the Income Tax Act was issued to the former tenant of the appellant and necessary documents were called for. It has been clearly stated by the said tenant that the said premises had already been vacated by them in the month of June, 1999 and the possession was handed over to the appellant then and there. When called upon, the appellant produced the following documents:-

- (a) A certificate from the bank that company was working from the address under consideration during the relevant period.
- (b) Copies of electricity bills showing that consumption of electricity increased in the following manner:



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**Financial Year**

1998-1999

1999-2000

2000-2001

2001-2002

(c) Copies of original plans submitted to S.T.P.I.

(d) Copies of P.F. returns showing the address

(e) I.E.C. Code.

In addition to the above the appellant has also

(i) Green card issued by S.T.P.I.

(ii) Certificate of incorporation upon changing the name of the company.

A perusal of the above documents/papers submitted by the appellant not only was in occupation of the property, but the same was used for the purpose of the business. It was also intimated during the appeal that

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Certificate of S.T.P.I is given only after the payment of the property. The bills of electricity are strong in evidence of the address of the property and substantial business. In my considered opinion the appellant was the owner of the property which was used for the business. Hence, the addition made by the appellant. Hence, the addition made by the appellant. Rs.32,31,648/- and assessing the same under the head "Income From House Property" stands deleted."

It is clear from the above that the premises

in the Assessment Year 2001-2002 for business purposes.

cannot be said that the premises were lying vacant.

computing Annual Letting Value thereof and charging tax thereon.

the head "Income From House Property" under section 22 of the

Income Tax Act would not arise. The judgment of the Tribunal

does not call for any interference. In view of the above, the



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that the assessee shall be entitled to depreciation  
property which was rightly being allowed by the  
law arises.

Dismissed.

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**DECEMBER 14, 2010**  
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