* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
78-80, 82.

\+ ITA Nos. 876/2010, 877/2010, 878/2010 and 880/2010

ASHIAN NEEDLES PVT. LTD. ..... Appellant
Through: Mr. M.P. Rastogi, Mr. K.N. Ahuja, Advocates

versus

CIT ..... Respondent
Through: Mr. Abhishek Maratha, Ms. Anshul Sharma, Advocates

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

ORDER

% **13.07.2010**

Regard being had to the similitude of controversy, these appeals were heard analogously and are disposed of by this singular order. We need not state the facts in detail except that the Income Tax Appellate Tribunal (for short 'the tribunal') in a composite order passed in ITA Nos. 3234, 3235, 3236 and 3237/Del/2009 pertaining to assessment years 2001-02 to 2004-05 in the absence of the counsel for the revenue after recording that the notices were served, remitted the matter to the assessing officer for consideration of the documents that were tendered in evidence taking recourse to Rule 46A of the Income Tax Rules, 1962 before CIT(A).

It is submitted by Mr. Rastogi, learned counsel appearing for th assessee that the notices were not served on the tribunal and had the counsel for the assessee appeared before the tribunal, he would have been in a position to satisfy the tribunal that it is not a case for remand inasmuch as in all circumstances as envisaged under Rule 46A of the 1962 Rules, the remit is not always imperative. That apart contended Mr. Rastogi, the assessing officer was noticed by the CIT(A) and after due deliberation, as is reflectable from the order passed by him, it would be vivid that opportunity was afforded to the said authority.

Resisting the aforesaid submission, Mr. Abhishek Maratha, learned counsel appearing for the revenue supported the order passed by the tribunal.

The singular question that emerges for consideration in this batch of cases is whether the tribunal should have proceeded ex parte against the assessee and directed a remit as if in all cases where an application is filed under Rule 46A of the Income Tax Rules, 1962 tendering fresh documents to decide the matter without adjourning it even presuming notices were served on the assessee.

Be it noted, learned counsel appearing for the assessee tried to impress upon us that the notices were not served and, therefore, the order should be

deemed to be an ex parte order. As advised at present, we are not inclined t delve into the said issue as we are of the considered opinion that the matter has to be remanded to the tribunal on the other issue.

To appreciate the controversy in entirety, it is apposite to refer to Rule 46A of the 1962 Rules. It reads as follows:

> "46A. (1) The appellant shall not be entitled to produce before the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals), any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the Assessing Officer, except in the following circumstances, namely:-
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> (a) where the Assessing Officer has refused to admit evidence which ought to have been admitted; or
> (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer; or
> (c) where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal; or
> (d) where the Assessing Officer had made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.
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> (2) No evidence shall be admitted under sub-rule (1) unless the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) records in writing the reasons for its admission.

(3) The Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) shall not take into account any evidence produced under sub-rule (1) unless the Assessing Officer has been allowed a reasonable opportunity-

(a) to examine the evidence or document or to cross-examine the witness produced by the appellant, or
(b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

(4) Nothing contained in this rule shall affect the power of the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the Assessing Officer under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271."

On a scanning of the aforesaid Rule, we are of the considered opinion that it is incumbent on the tribunal to address itself whether the circumstances are such that a remand is imperative. On a studied scrutiny of the order passed by the tribunal, it is noticeable the tribunal has referred to the order passed by the CIT and thereafter remanded the matter. In view of the aforesaid analysis, we have no other option but to set aside the said order passed by the tribunal and direct the tribunal to adjudicate the matter afresh

(5)

on the anvil of Rule 46A whether in the obtaining factual matrix the only option was to remit the matter to the assessing officer. We may hasten to clarify we have not expressed any opinion with regard to the contentions to be canvassed before the tribunal though same were vigorously put forth before us. The tribunal shall on its own scrutinize the factual matrix on the touchstone of law as engrafted under Rule 46A of the 1962 Rules and decide the controversy ascribing cogent and germane reasons.

In the result, the appeals are allowed to the extent indicated above. There shall be no order as to costs.

CHIEF JUSTICE

MANMOHAN, J

JULY 13, 2010
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