



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 28.04.2010

+ **ITA 1241/2009**

COMMISSIONER OF INCOME TAX-III Appellant

versus

SCHIFFLIES INDIA LTD. Respondent

Advocates who appeared in this case:-

For the Appellant : Mr Sanjeev Sabharwal

For the Respondent : Dr Rakesh Gupta with Ms Rani Kiyala

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)

1. The revenue is in appeal against the order dated 11.02.2009 passed by the Income-tax Appellate Tribunal in ITA No.2300/Del/2008 relating to the assessment year 2005-06. The Tribunal has set aside the assessment order as also the order passed by the Commissioner of Income-tax (Appeals) merely on the ground that the assessee had not been properly represented before the assessing authority as also before the appellate authority. The Tribunal took the view that it would be in the interest of justice that the assessee should be given one more opportunity to substantiate his return filed and,



out the assessment *de novo* after granting the assessee an additional opportunity to substantiate its claim.

2. We have heard the counsel for the parties and the respondent agrees that the order passed by the Tribunal ought to be set aside and the Tribunal be directed to decide the appeal on merits. We also agree with the suggestion made by the learned counsel for the respondent / assessee as also by the learned counsel for the revenue that this is a matter in which the Tribunal ought to have considered the appeal on merits and ought not to have set aside the assessment order as well as the order of the Commissioner of Income-tax (Appeals) merely on the purported ground that the assessee had not been properly represented before the assessing authority. Consequently, we set aside the impugned order and direct the Tribunal to hear the appeal filed by the assessee on merits.

We make it clear that we have not made any observations on the merits of the matter.

The appeal is disposed of.

BADAR DURREZ AHMED, J

V.K. JAIN, J

APRIL 28, 2010

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