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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 875/2010

COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Sonia Mathur, Advocate.

versus

SUBHASH CHAND Respondent
Through: None.

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Date of Decision: 16th July, 2010**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE MANMOHAN**

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

MANMOHAN, J (Oral)**CM APPL. 11963/2010**

This is an application for condonation of delay of 76 days in re-filing the appeal.



For the reasons stated in the application, delay of 76 days in filing the appeal is condoned.

Accordingly, application stands disposed of.

ITA 875/2010

1. The present appeal has been filed under Section 260A of Income Tax Act, 1961 (for brevity “Act 1961”) challenging the order dated 30th April, 2009 passed by the Income Tax Appellate Tribunal (in short “ITAT”) in ITA 4246/Del/2005.
2. Ms. Sonia Mathur, learned counsel for appellant submits that both the ITAT and Commissioner of Income Tax (Appeals) (in short “CIT(A)”) have erred law in deleting the addition of Rs.10,83,540/- made by the assessing officer on account of surrender made by the assessee during the course of survey under Section 133A of Act, 1961.
3. Briefly stated the material facts of the case are that on 08th March, 2002, a survey operation was conducted on the assessee’s business premises under Section 133A of the Act, 1961. During the course of survey, stock inventory, trading account and inventory of cash was prepared and the statement of assessee was recorded. On the basis of assessee’s admission, the assessing officer made addition of Rs.10,83,540/- to the income declared. The addition consisted of Rs.7,03,540/- on account of excess stock, Rs.2,75,000/- on account of showroom renovation and Rs.1,05,000/- on account of excess cash



found.

4. However, immediately thereafter, on 13th March, 2002 assessee withdrew the admission and stated that there was neither excess cash nor stock or expense incurred on renovation.

5. Both the CIT(A) and ITAT have found that assessee had filed books of accounts along with necessary supporting evidence like sale/purchase bills, cash books and ledger etc. They have further found that books result have been rejected by the assessing officer on the sole reason that the purchase bills had not been produced; even though as per letters dated 13th March, 2002 and 22nd January, 2003, the purchase bills had been filed. Consequently, according to ITAT, the assessing officer could not have rejected the books results. In fact, the ITAT has, in the impugned order, concluded as under:-

“We, therefore, hold that no credence can be given solely to the admission during survey for the purpose of making addition. The assessee has demonstrated that there was neither excess stock nor excess cash nor any expenditure on furniture or renovation etc. We, therefore, uphold the order of the learned CIT(A)”

6. We are of the opinion that in law an assessee is entitled to explain his admission. In the present case, the assessee has duly supported his retraction with the book results by filing necessary evidence. Since in the present case, there is neither any finding that the book results are unreliable and/or that any investment has been made in



renovation of showroom, we are of the opinion that no substantial question of law arises in the present appeal.

7. Accordingly, appeal is dismissed in limine but with no order as to costs.

MANMOHAN, J

CHIEF JUSTICE

JULY 16, 2010

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