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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ITA 762/2010****MULTIPLEX TRADING & INDUSTRIAL CO. LTD. Appellant****Through: Mr. M.S. Sayal, Senior Advocate
with Mr. Mayank Negi and
Mr. Sumit Kumar Singh and
Ms. Husnal Syali, Advocates****versus****INCOME TAX OFFICER****..... Respondent****Through: Mr. Sanjeev Sabharwal,
Advocate**

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Date of Decision: 26th July, 2010**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE MANMOHAN**

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

J U D G M E N T**MANMOHAN, J****CM 11183/2010**

Allowed, subject to all just exceptions.

CM 11184/2010

This is an application for condonation of delay of 59 days in re-filing the appeal.



For the reasons stated in the application, delay of 59 days in filing the appeal is condoned.

Accordingly, application stands disposed of.

ITA 762/2010

1. The present appeal has been filed under Section 260A of Income Tax Act, 1961 (for brevity “Act, 1961”) challenging the order dated 5th June, 2009 passed by the Income Tax Appellate Tribunal (in short “ITAT”) in ITA No. 863/Del of 2006, for the assessment year 2001-2002.

2. Briefly stated the relevant facts of the present case are that during the year 1999, appellant was appointed as handling agent by Gujarat Electricity Board (in short “GEB”) for settlement of its quality claims with South Eastern Coal Fields Ltd. (in short “SECFL”) in respect of coal supplies received by GEB during the period 1993 to 1999 on a success linked service charge basis. GEB had agreed to pay service charges vide works order dated 22nd December, 1999 at prefixed percentage of the amounts of claims settled with SECFL.

3. To fulfill its contractual obligations with GEB, appellant entered into a joint venture agreement dated 22nd November, 1999 with M/s. Mahan Enterprises Ltd. (in short “Mahan”). Under the joint venture, appellant was to pay 2.8% of the claim amount settled between GEB and SECFL to Mahan as Mahan’s share. In view of the said settlement,



GEB disbursed service charges of Rs. 2,12,01,307/- to appellant.

of this amount, appellant booked Rs. 1,48,40,915/- as expenses on account of monies payable to Mahan as per Clause 5 of the joint venture agreement.

4. The Assessing Officer disallowed Rs. 83,30,111/- out of Rs. 1,48,40,915/- as according to him, by virtue of Clause 6 of the joint venture agreement only surplus, if any, which remained after meeting cost/expenses is to be paid to Mahan, subject to 2.8% of claim amount settled.

5. On an appeal being filed by the appellant, Commissioner of Income Tax (Appeals) [in short "CIT(A)"] allowed the said appeal partly. However, the CIT(A) rejected the appellant's appeal regarding disallowance of Rs. 83,30,311/-. It is pertinent to mention that it was contended before the CIT(A) that Clause 5 provided the basis for accrual and sharing between appellant and Mahan and Clause 6 merely provided for disbursement modalities of the accrued share in revenue payable to Mahan. But the CITA(A) concurred with the Assessing Officer holding that Clauses 5 and 6 were to be read together.

6. The ITAT vide the impugned order has set aside the order of Assessing Officer and CIT(A) on this issue and directed the Assessing Officer to re-determine the share of revenue payable in the light of



provisions of Clauses 5 to 8 of the joint venture agreement.

7. Mr. M.S. Syali, learned senior counsel for appellant submitted that ITAT had erred in law in remanding the matter relating to disallowance of expenditure payable to Mahan for *de novo* consideration instead of deciding the matter itself when all the relevant facts were on record and were not disputed. He further submitted that ITAT's reliance in the impugned order on Clauses 7 and 8 of the joint agreement was highly misplaced as the said Clauses were to be invoked if the contingency referred to therein took place. According to him, Clauses 7 and 8 had no relevance to the issue in question.

8. Mr. Sanjeev Sabharwal, learned counsel for Revenue submitted that the impugned order caused no prejudice to the appellant as the matter had only been remanded to the Assessing Order for deciding the same *de novo*.

9. Having heard the parties we are of the opinion that ITAT by remanding the matter to the Assessing Officer for deciding the said case *de novo* has, in the process, even set aside the expenditure allowed by the Assessing Officer and CIT(A). We are of the view that ITAT has no power of enhancement of disallowance of expenditure made by the Assessing Officer and CIT(A) especially when no appeal had been filed by the Revenue.



10. Consequently, the impugned order to the extent it remands matter to the Assessing Officer for deciding the same *de novo* is set aside and the matter is remanded back to the ITAT for deciding the issue at hand.

11. We, however, make it clear that we have not expressed any opinion with regard to the disallowance of expenditure of Rs. 83,30,111/- incurred by the appellant. With the aforesaid direction, present appeal stands disposed of.

MANMOHAN, J

CHIEF JUSTICE

JULY 26, 2010

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