



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

ITA No.1107 & 1108 of 2006

% Judgment Delivered On: August 25, 2010

(1) ITA 1107 OF 2006

The Commissioner of Income Tax
Through :

. . . Appellant
Ms. Prem lata Bansal,

VERSUS

M/s Jay Rapid Roller Ltd.

Through: Mr. Rajiv Bahl, Advocate for Official
Liquidator

. . . Respondent

(2) ITA 1108 OF 2006

The Commissioner of Income Tax
Through :

. . . Appellant
Ms. Prem lata Bansal,

VERSUS

M/s Jay Rapid Roller Ltd.

Through: Mr. Rajiv Bahl, Advocate for Official
Liquidator

. . Respondent

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether Reporters of Local newspapers 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)

1. These two appeals relate to the assessment years 1997-98 and 1998-99 and arise out of common order dated 9th December, 2005 passed by the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal') dismissing the appeals of the revenue in respect of both the assessment years.



was claimed by the assessee and allowed by the Tribunal, though the Assessing Officer had disallowed the same on the ground that the bills of purchase of these assets were not produced.

3. Following question of law is raised in this behalf:-

“Whether the Ld. ITAT was justified in law in allowing depreciation on fixed assets to the extent of Rs. 66.26 lacs despite the assessee failing to produce the requisite evidence in this regard before the Assessing Officer.?”

4. The order of the Assessing Officer reveals that the assessee had made substantial claim for depreciation. The assessee was required to produce the purchase vouchers to substantiate its claim. The assessee could produce the vouchers for certain machineries only and depreciation qua those machineries only was allowed. However, in respect of factory building, plant and machinery and self fabricated machinery, vouchers to the extent of Rs.41,19,260/-, Rs. 1,66,64,271/- and Rs.1,66,64,271/- respectively, could not be produced by the assessee. For want of the vouchers, the Assessing Officer disallowed depreciation on these assets to the extent of Rs. 87,52,367/-. We may note at this stage itself that in respect of the same assets, the assessee had claim depreciation to the effect of Rs. 66,26,063/- in the assessment year 1998-99 as well and that was also disallowed on the same ground.

5. The CIT (Appeals) as the first appellate authority, allowed the depreciation upholding that the vouchers for all fresh purchases during the relevant years were furnished to the Assessing Officer and the balance addition was out of capital work in progress outstanding



CIT (A), it becomes clear that while accepting the contention of the assessee, there is no discussion on the basis of which the two authorities below came to the conclusion that the money was in fact spent by the assessee in purchasing of those “fixed assets”. There is also no discussion as to how the two authorities below came to the conclusion that these “fixed assets” were to be used in the assessment year under consideration.

6. For this reason alone, we set aside the impugned orders passed by the CIT (Appeal) as well as ITAT and remit back the case to CIT (Appeals) to consider the aforesaid aspects in detail and pass speaking orders.

7. Since the assessee is now in liquidation, before passing these orders, notice shall be issued to the Official Liquidator attached to the High Court of Delhi who is in possession of the all the relevant records.

**(A.K. SIKRI)
JUDGE**

**(REVA KHETRAPAL)
JUDGE**

August 25, 2010.
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