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

\+ ITA 1285/2010

COMMISSIONER OF INCOME TAX-IV ..... Appellant
Through: Mr. N.P. Sahni, Advocate.

versus

M/S DCM FINANCIAL SERVICES LTD. ..... Respondent
Through: None

% Date of Decision: 06th September, 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?No
3. Whether the judgment should be reported in the Digest?No

MANMOHAN, J:

1. The present appeal has been filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "Act, 1961") challenging the order dated 15th October, 2009 passed by the Income Tax Appellate Tribunal (for brevity "Tribunal") in ITA No. 2180/Del/2007 for the Assessment Year 1997-1998.

2. The relevant facts of this case are that on 30th November, 1997, respondent-assessee filed a return of ₹ 48,49,862/- for the Assessment Year 1997-1998. This included an income of ₹ 13,61,38,262/- under Section 115JA. Subsequently, on 24th March, 1999 a revised return was

filed showing a loss of ₹ 13,61,38,262/-. On 31st March, 20 assessment under Section 143(3) was concluded showing a loss of ₹ 11,61,38,262/-.

3. On 19th September, 2003, notice under Section 148 of the Act, 1961 was issued to the respondent-assessee after recording reasons for the same. On 31st March 2005, assessment under Section 143(3)/147 of the Act, 1961 was framed by the Assessing Officer (in short, “AO”). In the said assessment, AO inter alia made some additions and computed income under Section 115JA at ₹ 9,77,60,292/- and book profit at the rate of 30% thereon, i.e., ₹ 2,93,28,087/-.

4. Upon an appeal being filed, the Commissioner of Income Tax (Appeals) [in short, “CIT(A)”] vide its order dated 30th November, 2005 allowed the same holding that the issuance of notice under Section 148 of the Act, 1961 was bad in law. However, the CIT(A) gave certain directions to the AO.

5. Aggrieved with the order of CIT(A), the Revenue filed an appeal before the Tribunal. However, the same was dismissed.

6. In the meanwhile, on 10th May, 2006, AO gave appeal effect to the order of CIT(A) and complied with the direction of levying taxes in accordance with Section 115JA. AO accordingly computed the income under Section 115JA at ₹ 8,89,92,571/- and 30% profit thereon at ₹ 2,69,07,771/-.

7. Though CIT(A) dismissed the appeal filed by the respondent-assessee against the order of the AO dated 10th May, 2006, the Tribunal by the impugned order allowed the respondent's appeal on the ground that as the assessment order passed under Section 143(3)/147 of the Act had been annulled, therefore, all consequential orders passed by the AO and by the CIT(A) became invalid.

8. Mr. N.P. Sahni, learned counsel for the Revenue submitted that the Tribunal had erred in law in allowing the appeal and in setting aside the order of the AO as well as CIT(A) under Section 250 and 154 of Act, 1961.

9. In our opinion, there has been a dramatic change between the period the present appeal was filed and today. In fact, during this interregnum, Revenue's appeal against the Tribunal's initial order dated 07th November, 2008 has been dismissed. The Division Bench's order in the said appeal being ITA No.457/2010 is reproduced hereinbelow:-

> *"The Revenue is in appeal against the Tribunal's order dated 07.11.2008 arising out of the Revenue's appeal before the Tribunal being ITA No.393/DEL/09 pertaining to the Assessment Year 1997-1998. We may point out that the assessee had also preferred a cross-objection being CO No.337/Del/2006 in respect of the Commissioner of Income Tax (Appeals) order dated 30.11.2005. The Tribunal has taken a view after hearing both the sides that the issuance of the notice under Section 148 of the Income Tax Act 1961 was beyond the period of four years and that the records clearly showed that the assessee had made a full and complete disclosure and the issuance of notice was, therefore, barred by time. The Tribunal agreed with the Commissioner of Income Tax (Appeals) in its conclusion of setting aside the re-assessment proceedings on the point of*

> *limitation. The Tribunal also noted that the assessee, who was aggrieved by the order of the Commissioner of Income Tax (Appeals) on merits, had also filed a letter seeking withdrawal of the cross-objection filed by the assessee. Consequently, the Tribunal dismissed the Revenue's appeal on the point of the limitation as also the assessee's cross objections in relation to the applicability of Section 115JA of the said Act. We are not inclined to interfere with the order of the Tribunal.*
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> *The appeal is dismissed."*

10. We are also of the opinion that as the notice under Section 148 of the Act, 1961 was barred by time, the consequential order on merits could not be implemented. In fact, in view of the assessment order under Section 143(3)/147 having been set aside, the consequential order passed under Section 154 has also to be set aside. Accordingly, present appeal is dismissed *in limine*.

MANMOHAN, J

CHIEF JUSTICE

SEPTEMBER 06, 2010
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