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

\+ ITA 1487/2010

COMMISSIONER OF INCOME TAX ..... Appellant
Through: Mr. Abhishek Maratha, Advocate

versus

ANIL KUMAR BATRA ..... Respondent
Through: None

% Date of Decision : 24th 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.

J U D G M E N T

MANMOHAN, J

CM No.17261/2010 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

ITA 1487/2010

1. The present appeal has been filed under Section 260A of Income Tax Act, 1961 (for brevity "Act") challenging the order dated 15th January, 2010 passed by the Income Tax Appellate Tribunal (in short "Tribunal") in ITA No. 511/Del/2007 for the Assessment Year 1998-

2. Briefly stated the relevant facts of the present case are that on 08th January, 2004, a search and seizure operation was carried out at the respondent-assessee's premises. The Assessing Officer (in short, "AO") in the assessment proceedings rejected the book of accounts maintained by the respondent-assessee under Section 145(3) of the Act and made certain additions while computing the income of the respondent-assessee by invoking Section 144 of the Act.

3. Mr. Abhishek Maratha, learned counsel for the Revenue submitted that the Tribunal had erred in law in upholding the order of the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"] regarding determination of suppressed sale of bread and deletion of the addition made by the AO. Mr. Maratha further submitted that the Tribunal was not justified in law in upholding the deletion made by the CIT(A) on account of commission for conversion of coins/notes into high denomination notes. Mr. Abhishek Maratha also submitted that the Tribunal had erred in law in reducing the addition of disallowance of expenses made by the AO from 20% to 10% of the total expenses.

4. Having heard the submissions made by the learned counsel for the Revenue and on perusal of the record, we are of the considered view that the additions made by the AO were based on his own estimation and conjecture without relying upon any evidence whatsoever. In fact, the Tribunal in this context has held as under:-

> *"16. …………<u>In the course of the search, no material or documents or evidences were found to show and indicate</u>*

The addition has been made by the A.O. purely on the basis of his working where the shortage of Maida and other factors have been estimated by the A.O. without there being any material on record to support them. No document was found during the course of the search to show that the assessee has sold the bread at 11.56 per KG of bread……….

xxx xxx xxx

21. After hearing both the parties and perusing the A.O.'s order, we find that the A.O. has made this addition purely basis on estimation and surmises. The A.O. has treated the total sales made by the assessee as received only in small coins and torn notes without any material. The A.O. has not pointed out any material to show and indicate that the assessee has actually incurred expenses for converting small denomination notes into book denomination notes. The assessee has worked out the expenses on commission at Rs.31,050/- as part of the sales were being received in small coins and torn notes which was exchanged for high denomination notes for which assessee had incurred the expenditure of Rs.31,050/-. The estimation made by the A.O. is not based on any evidence and as such we are of the considered view that the Ld. CIT(A) has rightly deleted the addition of Rs.6,21,029/-.

"26……….. However, in the assessment year 1998-99, 1999-2000 and 2001-02 the Ld. CIT(A) has deleted the whole of the disallowance made by the A.O. to the extent of 20% of the total expenses. It is therefore, seen that the Ld. CIT(A)'s order is not in conformity in all the years. The assessee has not filed any appeal against disallowance sustained by the Ld. CIT(A) to the extent of 10% in assessment year 2000-01, 2002-03 and 2003-04. Therefore, the disallowance to the extent of 10% of the total expenses in this assessment year 1998-99 as so done by the Ld. CIT(A) in the assessment year 2000-01, 2002-03 and 2003-04 against which no appeal has been preferred by both the parties. Therefore, this ground No.3 raised by the revenue is partly allowed."

(emphasis supplied)

5. From the aforesaid Tribunal's order as well as CIT(A)'s order, it is apparent that the present case is not one where the regular books as

well as seized books of accounts were not available before the AO. are in agreement with the view of the CIT (A) and the Tribunal that the AO could not have unilaterally estimated the production figures on account of Maida shortage without assigning cogent reasons, or without citing comparable cases, especially when in the last few assessment years, the same percentage of wastage had been accepted.

6. Further, from the CIT (A)'s order, we find that the same AO had, in the case of another assessee, namely, Shri Ramesh Kumar Batra, while computing his income for the assessment year 2003-2004, taken the sale price to be Rs. 5.75 for 600 grams of loaf, that means, Rs.7.66 for 800 grams of loaf of bread. In our opinion, if the same AO had estimated the sale price at Rs. 7.66 for the assessment year 2003-04 in the case of Shri Ramesh Kumar Batra, he could not have estimated a higher price for a loaf of bread for the assessment year 1998-99 in the assessee's case.

7. Consequently the additions made by the AO cannot be retained. In any event, the factual findings arrived at by the final fact finding authority cannot be said to be perverse or contrary to record. Accordingly, we find that no substantial question of law arises in the present proceedings. Hence, the present appeal, being bereft of merit, is dismissed *in limine*.

MANMOHAN, J

CHIEF JUSTICE

SEPTEMBER 24, 2010