



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

% Judgment delivered on: 9th February, 2010

+ **ITA 119/2010**

COMMISSIONER OF INCOME TAX Appellant

- versus -

P.S. JAIN COMPANY LTD Respondent

Advocates who appeared in this case:

For the Appellant : Ms Sonia Mathur
For the Respondent : Mr B.N. Goswami

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

1. Whether reporters of local papers 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?

BADAR DURREZ AHMED, J (ORAL)

CM No. 1166 of 2010 (for Delay)

The delay in filing the appeal is condoned. The application stands disposed of.

ITA No. 119 of 2010

1. This appeal is directed against the order of the Income Tax Appellate Tribunal dated 5th December, 2008 in ITA No. 3804/DEL/2007 relating to Assessment Year 2003-04. We find that the Tribunal has given findings on three factual aspects of the matter. The first addition made by the Assessing



Officer was on account of disallowance of Rs 6,91,481/- on the ground that there were no business activities carried out by the assessee during the relevant period. The Tribunal has confirmed the deletion of the said amount by the Commissioner of Income Tax (Appeals). The Tribunal came to the conclusive finding of fact that the Assessee carried on business during the Assessment Year 2003-04 as the Assessee did a computer programming job for Fortis Financial Services for which payment had also been received by the Assessee. It had also rendered financial consultancy services by arranging a loan from CitiCorp for Oscar Investment Ltd and had received commission. Consequently, the Tribunal held that the disallowance was rightly deleted by the CIT(A).

2. The Assessing Officer has also made an addition on account of sale of a shop which, according to the Assessing Officer, had an estimated value of Rs 5,00,000/-. The shop in question was in the occupation of a tenant and was a temporary structure known as a “khokha” and measured only about 30 sq. feet. The Assessee was receiving only a sum of Rs 47.50 per month by way of rent in respect of the said shop.

3. It is true that the Assessee was not able to produce a sale deed in respect of the said shop, however, the Tribunal noted that the Assessee has produced sale deeds in respect of similar shops sold in March 1997 and December, 1998 in the same locality. The factual position in respect of those sale deeds in that those shops were sold for Rs 4,500/- and Rs 9,500/-.



Consequently, the Tribunal held that the sum of Rs 6,000/- indicated by the Assessee as being the sale price of the said shop was acceptable. The Tribunal also noted that the Assessee could not evict the tenant and as such the Assessee decided to sell the structure to the tenant himself. The Tribunal also came to the conclusion that there was no evidence of any additional amount being received by the Assessee over and above the amount of Rs 6,000/- disclosed by the Assessee in his account.

4. Thus on the findings of fact, the Tribunal upheld the view taken by the Commissioner of Income Tax (Appeals) and accepted the sale price as Rs 6,000/- and, therefore, deleted the addition made by the Assessing Officer.

5. The third addition made by the Assessing Officer was of Rs 5,000/- on account of unexplained cash credit under Section 68 of the Income Tax Act, 1961. The said cash credit was deleted by CIT(A) and the deletion was confirmed by the Income Tax Appellate Tribunal. The Tribunal recorded that there was no question with regard to the genuineness of the cash credit and the only point raised by the Revenue was that the Commissioner of Income Tax (Appeals) had admitted additional evidence introduced by the Assessee at the stage of the appeal. The Income Tax Appellate Tribunal, after referring to Rule 46A, concluded that the Commissioner of Income Tax (Appeals) had exercised his discretion in allowing the additional evidence and had also afforded an opportunity to the Assessing Officer to examine the additional evidence.



The Tribunal held that since there was no challenge to the genuineness of the cash credit, the finding of CIT(A) in deleting the said addition after admitting additional evidence did not call for any interference.

6. We agree with the view taken by the Tribunal on this aspect of the matter.

7. No perversity in the findings of the Tribunal has been pointed out by the learned counsel for the Revenue. No substantial question of law arises for our consideration. The appeal is therefore dismissed.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

FEBRUARY 09, 2010

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