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%10.08.2011

Present : Dr. Rakesh Gupta, Mr Ashwani Taneja, Ms Rani Kiyala & Mr Johnson Bara, Advocates for the Appellant.
Mr Kamal Sawhney, Sr. Standing Counsel for the Revenue.

+ ITA No. 858/2007

* We have heard the learned counsel for the parties at length.

Learned counsel for the appellant submits that in pursuance of the order of the ITAT dated 20.10.2006 the Assessing Officer has passed a fresh order and the assessee has even filed an appeal, which is pending before the CIT(A). He thus does not seek to press the present appeal qua the issue of the matter being remanded to the Assessing Officer for re-appraisal on account of the additional evidence, but submits that there are certain observations made in the order of the ITAT, which may prejudice him in as much as they seek to give an impression of a finding having been returned that the appellant had issued cheques from a cheque book obtained subsequently qua the bills of earlier date.

In our considered view in the impugned order the ITAT after recording the submission of the rival parties directed that the additional evidence relied upon by the revenue be placed before the Assessing Officer; who thereafter was required to pass fresh order after giving due opportunity to the assessee. The additional evidence which the revenue was allowed to place on record was a letter issued by the Oriental Bank of Commerce dated 15.12.2005, wherein it is stated that cheque book,



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containing 25 leaves bearing nos. 026101 to 026125 was issued on 22.01.2001. As to what would be the effect of this letter had to be examined by the Assessing Officer. Since the Assessing Officer has already passed an order, it will be now for the CIT(A) to examine this issue. In these circumstances on this aspect the learned counsel for the assessee does not press the issue any further in the present appeal.

The second aspect which was urged by learned counsel for the appellant pertains to addition of ₹ 11,08,000/- made on the basis of entries contained in seized loose sheets, (on the presumption that cash transfer entries were not recorded in the cash book) ignoring the explanation that these entries reflected transfers made between the branch office and the head office which were fully accounted for in the books. The ITAT on examination of this issue has returned a finding that the books of accounts of the assessee were neither found during the course of search nor produced before the Assessing Officer till the date of the assessment order despite the fact that the copies of the printouts of floppy of computer were taken and supplied to the assessee on 18.02.2001.

Learned counsel for the appellant submits that he would like to move an application under Section 254(2) of the Income Tax Act, 1961 as according to him there is a contradiction on this aspect between the findings, as recorded by the ITAT and the CIT(A). This

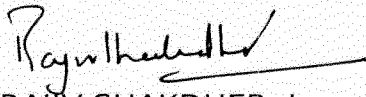


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according to the counsel becomes more apparent if regard is had to the panchnama.

In view of the request made, the liberty is granted to the appellant/ assessee to do so in accordance with the law. The appeal stands dismissed.


SANJAY KISHAN KAUL, J.


RAJIV SHAKDHER, J.

AUGUST 10, 2011
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