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% 19.07.2011

Present: Mr. Pritesh Kapur, Mr. Ankur Saigal and Ms. Bina Gupta,
Advocates for the Appellant.
Mr. Deepak Chopra, Advocate for the respondent.

+**ITA No.882/2011**

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The appellant assessee is engaged in work of import of pulses and PVC resins and makes sales on wholesale basis. It enters into contracts for sale purchase of commodities in the relevant assessment year i.e. 2007-08. The appellant had entered into certain agreements with the parties for delivery of pulses etc. According to the appellant due to low payment in the local market the appellant requested the said parties to delay the delivery as this was not accepted, and was treated as breach of contract and on the part of the appellant; the appellant paid stipulated damages to the said parties for the breach of contract. Likewise, in one case for similar reasons when the foreign party could not supply the material to the appellant, the appellant received the damages in the said account. However, the damages paid by the appellant in respect of two contracts were more than the damages received in respect of contract. As averred under this contract the appellant suffered business loss and the net damages were paid by the appellant were claimed as deduction under Section 37(1). The Assessing Officer treated the loss as speculative and, therefore, disallowed the amount of Rs. 3,08,75,218 which had



been paid by the assessee to certain parties on account of damage for breach of contract.

The Assessing Officer also finds that the assessee had given interest free advance to one party whereas it had taken loans and advance from bank to whom the assessee was paying interest. In these circumstances, the Assessing Officer also disallowed the interest paid on estimated basis on the ground that it has given the interest free advance to one party.

The assessee preferred appeal against the aforesaid order of the Assessing Officer and the CIT(A) deleted both the additions. It was now the turn of the Revenue to feel aggrieved by the order the CIT(A). The Revenue approached the Tribunal challenging the order of CIT(A) on both the issues. The Income Tax Tribunal remanded the case for fresh consideration stating that in the impugned order that some evidence which was necessary for deciding issues has not appeared on record. Liberty is accordingly given to the assessee to pay the same, record their evidence in order to enable the Assessing Officer to determine the issues.

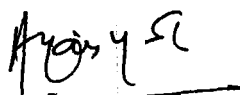
Challenging this order, the present appeal is preferred. It is the contention of the learned counsel for the appellant that no such evidence as suggested by the Income Tax Tribunal in the impugned order was necessary. He has referred to the order of the CIT(A) that there is no dispute about the facts which have come on record in the form of evidence. He also submits that the said material/facts were



sufficient to determine the issues in question. His further submission is that some of the evidences pointed out by the Tribunal was not even necessary and had the Tribunal called upon the assessee to clarify the position at the time of arguments the assessee would have replied to the same to the satisfaction of the Tribunal. He has also referred to the judgment of this Court in ***CIT Vs. Bhagwan Dass Rameshwar Dayal*** 149 ITR 387 and submits that though this judgment is taken note of by Tribunal but not dealt with in the impugned order.

In the aforesaid circumstances, we are of the opinion that the assessee may move an appropriate application before the Tribunal under Section 254(2) of the Act bringing to its notice the aforesaid aspects and to create on its basis as no further evidence is required to determine the issues involved. We may make it clear that we have not commented upon the merits of the contentions raised by the assessee and it would be open to the Tribunal to deal with the application in accordance with law.

Giving liberty to the appellant assessee as aforesaid, this appeal is dismissed as withdrawn and however in case the appellant feels aggrieved by the orders passed by the ITAT, it will be open to the appellant to challenge the order.


A.K. SIKRI, J.


M.L. MEHTA, J.

JULY 19, 2011/vld