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% 29.07.2011

Present: Ms Rashmi Chopra, counsel for the appellant.
Mr. Ajay Vohra with Ms Kavita Jha and Mr. Somnath Shukla,
Advocates for the respondent.

+ITA No.448/2011

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Though the Tribunal has, vide the impugned order dated 11.06.2010, decided various issues, the revenue in this appeal is aggrieved by one ground which is raised in its appeal before the Tribunal and the same reads as under:

"On the facts and in the circumstances of the case as well as in law, the Ld. CIT(A) has erred in deleting the additional Rs.1,01,40,554/- and Rs.1,07,00,000/- made by the AO u/s 41(1) on account of advance from customer and securities deposits respectively."

It is pointed out that reading of the aforesaid ground would make it clear that the revenue has challenged the deletion of two amounts i.e. Rs.1,01,40,554/- and Rs.1.07 crore which were deleted by CIT(A) reversing the order of the assessing officer making those additions under Section 41(1) of the Act on account of advance from customer and securities deposits respectively. Ms. Chopra has drawn our attention to para 3 where the aforesaid ground is considered in the following manner:

"We have considered the facts of the case and submissions made before us. The amount of Rs.1.07 crore represents the security deposits received by the assessee in respect of lease of machines manufactured by it. The Ld. CIT(Appeals) has fairly pointed out that these liabilities have not ceased to exist u/s 41(1). The assessee has also



not derived any benefit or perquisite in so far as these amounts are concerned from carrying on the business. Consequently, we do not find any error in his order, which requires any interference from us."

She has, thus, pointed out that though the ITAT has dealt with the deletion of Rs. 1.07 crore on account of securities deposits, there is no discussion or finding in respect of the deletion of Rs.1,01,40,554/- on account of advance from customers. She appears to be correct in her submission. In these circumstances, we permit the revenue to move an application under Section 254(2) of the Act to enable the Tribunal to determine that issue as well and its effect.

The appeal is disposed of in the above terms.

A handwritten signature in black ink, appearing to read 'A.K. Sikri'.

A.K. SIKRI, J.

A handwritten signature in black ink, appearing to read 'M.L. Mehta'.

M.L.MEHTA, J.

JULY 29, 2011
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