



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
REVIEW PETITION 96/2010
&
CM APPL. 2739/2010 IN W.P. (C) 7792/2008

% Reserved on: December 3, 2010
 Delivered on: January 14, 2011

RAHULJEE & COMPANY PVT. LTD. . . . Petitioner

Through : Mr. P.L. Juneja, Advocate

VERSUS

INCOME TAX APPELLATE TRIBUNAL-I & ORS. . . . Respondent

Through: Ms. Prem Lata Bansal, Advocate

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether Reporters of Local newspapers 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?

A.K. SIKRI, J.

CM APPL. 2739/2010 (Condonation of delay)

1. This is an application for condonation of delay in filing the Review Petition. It is stated in the application that the Chairman/Managing Director of the review petitioner/assessee had developed severe heart trouble in the



last week of January, 2010 and because of which he could not attend the company work and was admitted in the hospital on 9th February, 2010 and was discharged on 18th February, 2010. Medical certificates are enclosed alongwith the application.

2. No reply to this application is filed at the time of hearing. There was no opposition to this application either. We, therefore, condone the delay treating the reasons stated in the application as sufficient cause.

3. Application stands disposed of.

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4. By means of this petition, the review petitioner (hereinafter referred to as the 'assessee') seeks review and recall of order dated 23rd December, 2009. The Writ Petition (C) 7792/2008 was dismissed solely on the ground that the petitioners have an equally efficacious remedy by way of an appeal and, therefore, remedy of writ petition was not available.

5. We may point out that the assessee herein had challenged the order of the Assessing Officer by filing appeal before the CIT (A). Challenging that order the assessee had approached the Income-Tax Appellate Tribunal by filing second appeal. This appeal was partly allowed vide orders dated 17th September, 1990. The challenge of the assessee was on many counts but we are concerned only with the following:-



- (i) Payments made to one Mr. Sunil Kumar in the sum of ₹ 2 lacs which the assessee had claimed as deduction but was disallowed.
- (ii) Expenses of ₹ 80,000/- incurred by the assessee which was disallowed by the Assessing Officer.
- (iii) Consequently deduction of interest under Section 217 of the Act. The Tribunal had allowed the expenses of ₹ 80,000/- but rejected the claim of ₹ 2 lacs.

6. The assessee filed rectification application before the Tribunal seeking rectification of aforesaid order dated 17th September, 1990. This application remained pending for number of years and was finally dismissed on 24th February, 2006. The assessee moved another rectification application on 10th March, 2006 which was also dismissed on 15th September, 2006 as not maintainable. It is at this stage challenging the orders dated 17th September, 1990 passed in the appeal and orders dated 24th February, 2006 passed in rectification application that the assessee preferred the instant writ petition. Holding that the assessee had efficacious remedy of filing appeal under Section 260A of the Act, writ petition was dismissed vide orders dated 23rd December, 2009.

7. Mr. Juneja, learned counsel appearing for the assessee had made detailed submissions questioning the decision of the Tribunal in not allowing the deduction of ₹ 2 lacs under Section 217 of the Act. His submission was that it amounted to double taxation and in these circumstances, alternate



remedy was no bar to entertain the writ petition under Article 226 of the Constitution of India.

8. It is not necessary to go into all these aspects. We feel that the assessee has arguable case in so far as challenge to the decision of the Tribunal is concerned. In these circumstances, we are of the opinion that in the interest of justice, proper course of action would be to treat this writ petition as appeal under Section 260A of the Act. Various submissions made by Mr. Juneja on merits can be considered once this embargo is over.

9. We, thus, allow the review petition on the aforesaid ground, recall our orders dated 23rd December, 2009 and allow the writ petition to be converted into appeal. The Registry shall assign proper appeal number and matter be listed before the Regular Bench on 17th January, 2011.

10. This Review Petition is disposed in the aforesaid terms.

**(A.K. SIKRI)
JUDGE**

**(SIDDHARTH MRIDUL)
JUDGE**

January 14, 2011

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