



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

+ **ITA No.581 of 2011**

% Judgment delivered on: May 11, 2011

**COMMISSIONER OF INCOME TAX**

Through :

**. . . APPELLANT**

Mr. N.P. Sahni, Sr. Standing Counsel..

VERSUS

**VIPIN GUPTA**

Through:

**. . .RESPONDENT**

Mr. Kanan Kapur, Advocate with respondent.

**CORAM :-**

**HON'BLE MR. JUSTICE A.K. SIKRI  
HON'BLE MR. JUSTICE V.K. JAIN**

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. (Oral)**

1. Having regard to the nature of order we propose to pass, that too with consent of both the parties, it is not necessary to spell out the contour of controversy in detail. Our purpose would be served by taking note of the background facts in brief touching upon the issue involved.



2. On the basis of certain documents retrieved from the premises of the Fena Ltd. whose premises was searched, the assessee herein was served with reassessment notice under Section 148 of the Income-Tax Act (hereinafter referred to as 'the Act') for the assessment year 1995-96. Reassessment order was passed on 27<sup>th</sup> March, 2001 making additions on three counts. However, in the present proceedings we are concerned with only one addition, which is the subject matter of appeal preferred by the Revenue. It pertains to difference of gross receipts in the sum of ₹ 43,23,457/-. It was found by the Assessing Officer that in the Bank account of the assessee, total credit entries amounted to the sum of ₹ 61,66,599/- but the assessee had only shown ₹ 18,43,142/- in the profit and loss account. The difference between the amount deposited in the bank account and shown in the profit and loss account was calculated @ ₹ 43,23,457 (₹ 61,66,599 minus ₹ 18,43,142/-) and the same was added as undisclosed income. In the appeal, the submission of the assessee was that it had received the aforesaid on account of telecast charges from SACI Allied Products Ltd. According to the assessee the total cheques deposited in the bank were ₹ 69,61,599/-out of which cheques worth ₹ 16,35,000/- were returned back and thus leaving ₹ 53,26,599/- in the account. Further, these receipts included the amount of ₹ 11,98,350/- received on account of wall painting. The



assessee had also spent a sum of ₹ 26,88,450/- on cycle rickshaw publicity & video van publicity as well as banners and, therefore, net amount was taken to the profit and loss account. The CIT (A) accepted this explanation and deleted the addition, inter alia, observing that the net income had been taken @ 15% at the receipt. The Tribunal has upheld the same.

3. The neat submission made by the learned counsel for the Revenue is that the purported expenditure of ₹ 26,88,450/- on account of cycle rickshaw publicity & video van publicity as well as banners etc. is accepted without any proof thereof. On this basis, the submission of Mr. Sahni is that the matter warrants to be remitted back to the AO.

4. After hearing the learned counsel for the parties, we are in agreement with this submission of Mr. Sahni. It is not necessary to spell out the reasons as learned counsel for the assessee has also accepted this course of action. Accordingly, the matter is remitted back to the AO who shall verify the records of the assessee and go into the veracity of expenditure of ₹ 26,88,450/- claimed by the assessee and thereafter pass afresh order on the basis of evidence produced by the assessee.



5. The present appeal stands disposed of in the aforesaid terms.

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

**(V.K.JAIN)**  
**JUDGE**

**MAY 11, 2011**  
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