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

Date of decision: 20th November, 2012

\+ ITA 638 & 639/2012

CIT ..... Appellant

Through: Mr.Sanjeev Sabharwal, Sr.Standing Counsel with Mr.Puneet Gupta, and Ms.Gayatri Verma, Advocates.

versus

JRM STEEL PVT. LTD. ..... Respondents

Through: Mr.S.Krishnan, Advocate

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR

R.V. EASWAR,J: (OPEN COURT)

CM Nos.19160 & 19161/2012

Applications are allowed subject to all just exceptions.

ITA 638 & 639/2012

The appeals are by the Revenue and they arise out of the order passed by the Income Tax Appellate Tribunal ('Tribunal' for short) on 31 10.2011 in the cross appeals filed by the assessee and the Revenue. In these appeals we are concerned with the order of the Tribunal in ITA Nos.1879-1880/Del/2011, which are appeals filed by the Revenue before the Tribunal in relation to the assessment years 2000-01 and 2001-02 The order of the Tribunal which is impugned in these appeals was passed in the second round of the proceedings. In the first round of the proceedings, it was the assesse who was in appeal before the Tribunal in ITA Nos.821-822/Del/2007 which were disposed of by the Tribunal by order dated 23.3.2009. This was an agreed order

in the sense that both parties before the Tribunal (the assessee and the Revenue) agreed to the following: -

(a) that the assessee will not challenge the validity of the reopening of the assessment and

(b) the matter would be sent back to the Assessing Officer in the light of the judgment of this Court in the case of *CIT vs. SMC Sharebrokers Ltd.*, (2007) 288 ITR 345 to enable the Assessing Officer to supply the copies of the statement of one Pradeep Jindal to the assessee and if desired by the assessee to afford an opportunity to cross examine him and thereafter make a fresh assessment in accordance with law. The Tribunal in the light of the above, restored the assessments to the Assessing Officer for fresh disposal.

2. Pursuant to the order of the Tribunal, the Assessing Officer took up the assessments afresh. The assessee requested for cross examination of the Pradeep Jindal. Accordingly summons were issued under Section 131 of the Income Tax Act, 1966 ('Act' for short) to him in response to which a written reply was submitted by Pradeep Jindal along with copy of the account of the assessee in the books of Jindal Electro Casting Pvt. Ltd. The assessee requested the Assessing Officer to issue another summons insisting on the personal appearance of Pradeep Jindal so that he can be cross examined. The Assessing Officer obliged and issued the summons, but agai Pradeep Jindal did not appear on account of indisposition and in support of the reason, a doctor certificate was also attached. He also stated that he had already submitted his reply in the matter and his company had closed its activities for the past several years and he had nothing more to say

3. On these facts the Assessing Officer took the view that the facts remain the same as in the original assessment proceedings and there was no fresh evidence to

support the assessee's contention that no cash purchases were made from Jindal Electro Casting Pvt. Ltd., Hissar, to the extent of ₹86,87,000/- for the assessment year 2000-01 and ₹2,42,71,186/- for the assessment year 2001-02. He accordingly repeated the additions of these amounts in the fresh assessments under Section 69C of the Act

4 The assessee appealed to the CIT (Appeals) who took up the appeals for both the years together and passed a common order on 24.02.2011. The contention of the assessee before the CIT (Appeals) was that the additions were wrongly repeated in the fresh assessments by the Assessing Officer. It was pointed out that out of the additions of ₹86,87,000/- and ₹2,42,71,186/- made originally for the assessment years 2000-01 and 2001-02 respectively, additions to the extent of ₹62,37,000/- and ₹2,22,19,840/- were deleted by the CIT (Appeals) in the appeals filed against the original assessments and his order was accepted by the Revenue which did not file any appeal before the Tribunal It was only the assessee which filed appeals before the Tribunal in ITA Nos 821 and 822/Del/2007 against the additions sustained by the CIT (Appeals). The Tribunal was therefore seized of only the assessee's appeals questioning the additions to the extent they were sustained by the CIT (Appeals) It was thus contended that the relief given by the CIT (Appeals) in the original round of proceedings having become final, the Assessing Officer had no jurisdiction to repeat the entire additions in the fresh assessments made pursuant to the order of the Tribunal dated 23.3.2009. The assessee also made submissions on merits

5. The CIT (Appeals) accepted the preliminary contention of the assessee that the additions, to the extent deleted by the CIT (Appeals) in the first round of appeal and not having been appealed against by the Revenue, cannot be made again in the fresh assessments He relied upon the judgment of the Supreme Court in the case of *CIT vs. Amrit Lal Bhogi Lal & Co.*, (1958) 34 ITR 130. He, therefore, held that the Assessing

Officer had no power to again bring the amounts of ₹62,37,000/- and ₹2,22,19,840/- to tax in the assessment years 2000-01 and 2001-02 respectively.

6. As regards the balance of the additions, the CIT (Appeals) held that even according to the Assessing Officer there was no change in the factual position and not a single new fact was brought on record either by the Assessing Officer or by the assessee in the fresh assessment proceedings. He, therefore, held that additions to the extent of ₹24,50,500/- and ₹20,51,356/- for the assessment years 2000-01 and 2001-02 respectively should be confirmed, as was done by his predecessor in the first round of proceedings. He held accordingly.

7. It was against the aforesaid order of the CIT (Appeals) that both the assessee and the Revenue preferred cross appeals to the Tribunal. The assessee's appeals were numbered as ITA Nos.1869 & 1870/Del/2011 and the Revenue's appeals were numbered as ITA Nos.1879 & 1880/Del/2011. The Tribunal dismissed the Revenue's appeals on the same reasoning which appealed to the CIT (Appeals), holding as follows: -

> *"7.1 In our considered opinion, AO should not have traveld (sic.) beyond the directions of ITAT, which are clear and unambiguous to reframe the addition to the extent of assessee's appeal only. Department has already been taken a decision by accepting the part deletion made by the CIT (A) in first round. AO has merely repeated his predecessor's order. In view CIT (A) rightly held that the AO should have restricted the reframing of issue to the above extent. We uphold his orders. Consequently, we dismiss the revenue's appeal for both the years."*

8. As regards the assessee's appeals, the Tribunal agreed with the assessee and deleted the additions of ₹24,50,500/- for the assessment year 2000-01 and ₹20,51,356/- for the assessment year 2001-02.

9. The Revenue challenges the order of the Tribunal. So far as the order of the Tribunal in the appeals filed by the Department in ITA Nos.1879-1880/Del/2011 is concerned, we do not think that any substantial question of law arises for consideration since the Revenue accepted the order of the CIT (Appeals) in the first round of proceedings, deleting substantially the additions made by the Assessing Officer. It did not prefer any appeals to the Tribunal against the relief of ₹62,37,000/- and ₹2,22,19,840/- granted by the CIT (Appeals) respectively for the assessment years 2000-01 and 2001-02. The Tribunal was seized only of the appeals filed by the assessee against the additions sustained by the CIT (Appeals) in the first round of proceedings and, therefore, the restoration of the matter to the Assessing Officer for fresh disposal was confined only to the additions sustained by the CIT (Appeals) in those proceedings. Matters which have attained finality cannot be re-agitated The Revenue failed to file appeals before the Tribunal challenging the relief granted by the CIT (Appeals) in the first round of proceedings That part of the assessment orders, therefore, got merged with the order of the CIT (Appeals), which became final. It was, therefore, not open to the Assessing Officer to tamper with their finality, so far as the relief granted by the CIT (Appeals) is concerned. The CIT (Appeals) in the second round of proceedings, in our opinion rightly invoked the judgment of the Supreme Court cited supra and the Tribunal has rightly held that the Revenue cannot question the relief granted by the CIT (Appeals) on the principle of finality of orders. In our opinion, therefore, no question of law arises for our consideration. The appeals of the revenue are accordingly dismissed with no order as to costs.

R.V.EASWAR, J

S. RAVINDRA BHAT, J

NOVEMBER 20, 2012
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