



§-82 &amp; 84

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 637/2010+ ITA 731/2010

COMMISSIONER OF INCOME TAX

..... Appellant

versus

HIROYASU KITADA

..... Respondent

.....Appellant

Through: Ms. Rashmi Chopra, Sr. Standing Counsel, for Income Tax.

.....Respondent

Through: Sh. Salil Kapoor, Sh. Vikas Jain, Ms. Manonect Dalal and Ms. Preity Goel, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.V.EASWAR

ORDER

% 03.08.2012

The only question urged in these appeals by the Revenue is whether the refund of the excess amount deducted and paid towards the TDS received by the employee was to be treated as income. The CIT (Appeals) had observed that there was no material in support of the assessee's claim that the refund received (in respect of the Assessment Year 2003-04) had actually been passed on to the employer as claimed by the assessee. Facially, the impugned order of the ITAT is silent as to how it concluded that the amounts had in fact been paid back. In these circumstances, it would be appropriate that the matter is remitted to CIT (Appeals) for proper verification. It is clarified that in the event the amounts are in fact remitted or paid back to the employer in question, no tax liability would arise. The AO shall also verify whether in fact tax refund was given to the employee for the Assessment Year 2004-05, in view of the respondent's assertion that no refund was in fact received for that assessment year.

In view of the above discussion, the matter shall be remitted to the concerned AO for verification and appropriate orders in accordance with law. The AO shall ensure that the matter is completed and orders made within three months of receipt of the order. ITA 637/2010 and 731/2010 are disposed of in the above terms. All rights and contentions are left open.

  
S. RAVINDRA BHAT, J

  
R.V.EASWAR, J

AUGUST 03, 2012

'ajk'