



S-4

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 1727/2010

CIT

..... Appellant
Through: Ms.Suruchi Aggarwal, Sr. Standing
Counsel.

versus

GUPTAJI TENT SERVICES

..... Respondent
Through: Mr.O.S. Bajpai, Sr. Adv. with Mr.P.S.
Sharda, Ms.M. Bajpai & Mr.S. Bajpai,
Advts.

CORAM:**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**
HON'BLE MR. JUSTICE R.V.EASWAR**ORDER****16.08.2012**

%

Counsel for the appellant has tendered the costs today which were directed to be paid vide order dated 21.2.2012.

The question of law raised in this case is whether the Tribunal fell into error in affirming the order of the Commissioner, CIT(Appeals). The question of law sought to be urged pertains to the alleged unreasonableness of the findings made by the said two authorities.

The appeal was filed without the necessary documents and notice was issued on 2.11.2010. The order-sheet reveals that after several hearings spread over almost three years, the appeal was heard substantially on 21.2.2012 and the following order was recorded:-



"We have heard the counsel for the parties at length. The issue/question raised is whether the findings recorded by the tribunal are perverse. It is not possible to go into and examine the allegation of perversity without the documents/ statements being on record. The Revenue-appellant has not filed the same. It is the responsibility and duty of the Revenue as an appellant to file the statements and documents.

Last opportunity is granted to Revenue-appellant to file documents/statements on record within four weeks subject to payment of costs of Rs.10,000/- with Delhi High Court Bar Association Library Fund. The said costs will also be paid within four weeks.

We are constrained to impose costs for the reason that this basic requirement and need to file statements/ documents, was apparent and should have been filed with the grounds of appeal. For example the Assessing Officer has recorded that statements of Mr. Ashok Chauhan and Bhim Singh Chauhan were furnished to the assessee. However, the CIT (Appeals) and the ITAT have held to the contrary and they have placed reliance on the letters written by the assessee during the course of the assessment proceedings. It is also a contention of the assessee that the letter dated 09.03.2003 quoted by the Assessing Officer is not the complete letter. These aspects and when the statements were furnished is a question of fact. If the finding of the tribunal is incorrect, then documents like the letters written by the assessee and note/ letter by which statements were furnished should be filed. A second example may also be noticed. Assessing Officer had made an addition of Rs.1,17,440/- on the basis of a seized document wherein this figure is mentioned. The Assessing Officer had also relied on the statement of Vinod Khurana that he had made payment of Rs.30,000/- in cash and was issued one unprinted receipt of Rs.20,000/- The CIT (Appeals) upheld the addition. The tribunal has deleted the addition. It is not clear from the record, whether the amount of Rs.30,000/- was included in the income by the assessee. It is also not clear whether before the Assessing Officer it was stated by the assessee that this amount was included in the regular books of accounts.

The revenue-appellant will prepare a chart stating and referring to the particular finding recorded by the Assessing Officer, the document and material relied upon by him, the finding recorded



by the First Appellate Authority and Second Appellate Authority on the said aspect including the reasons recorded by them and the document/ statement referred. The last column will indicate and state why and for what reason/ ground the finding of the ITAT is perverse. The said chart will be filed within a period of four weeks after the documents/ statements are filed. Copy of the said chart will be furnished to the respondent- assessee.

List on 03.05.2012.

At this stage Mr. Sharda states that as far as letter dated 09.03.2003 is concerned that he is not sure whether the entire letter or only a part thereof has been quoted in the assessment order.

DASTI."

On the next date of hearing i.e. 03.05.2012, this Court noticed that neither the costs nor the documents and chart required were filed by the Revenue. Order dated 03.05.2012 reads as follows:-

"Order dated 21.02.2012 has not been complied with. Cost should be paid within four weeks, failing which, we may dismiss the appeal.

Learned counsel for the appellant-revenue has moved an adjournment slip and stated that the Revenue is trying to locate record. Documents may be filed within four weeks.


List on 16.08.2012."

Ms. Aggarwal submits today that despite her best endeavours, the concerned Commissioner of Income Tax and officers have not been able to furnish the requisite documents. The order dated 21.2.2012 was categorical. Similarly the order dated 03.05.2012 granted limited time to the Revenue to file the records. In the absence of these necessary records, no substantial question of law can be made out.



Having regard to the above, this Court is of the opinion that the Revenue is not only avoiding but is also uninterested in the proper prosecution of this appeal, which is accordingly dismissed.


S. RAVINDRA BHAT, J


R.V.EASWAR, J

AUGUST 16, 2012
gm