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

+ ITA 276/2010

COMMISSIONER OF
INCOME TAX

..... Appellant
Through: Mr. Sanjeev Sabharwal, Senior
Standing Counsel

versus

ENGINEERS INDIA LTD.

..... Respondent
Through: None

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Date of Decision: 20th September, 2010

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No. |
| 2. To be referred to the Reporter or not? | No. |
| 3. Whether the judgment should be reported in the Digest? | No. |

J U D G M E N T

MANMOHAN, J

CM 3235/2010

This is an application for condonation of delay in re-filing the appeal.

For the reasons stated in the application, delay in re-filing the appeal is condoned.

Accordingly, application stands disposed of.



ITA 276/2010

1. The present appeal has been filed under Section 260A of the Income Tax Act, 1961 (for brevity “Act”) challenging the order dated 18th July, 2008 passed by the Income Tax Appellate Tribunal (in short “Tribunal”) in ITA No. 1569/Delhi/2005 for the Assessment Year 1996-1997.
2. Mr. Sanjeev Sabharwal, learned senior standing counsel for Revenue submitted that the Tribunal had erred in law in upholding the order of Commissioner of Income Tax (Appeals) who had quashed the re-assessment proceedings initiated under Section 147/148 of the Act.
3. It is pertinent to mention that the reason for reopening the concluded assessment proceedings was the decision for Assessment Year 2000-2001 wherein such warrantees, guarantees and penalties were disallowed.
4. Upon a perusal of the record, it is apparent that the aforesaid deductions were allowed after considering the reply of the assessee dated 27th March, 1998 to the notice/questionnaire issued by the Assessing Officer (in short “AO”) under Section 142(1) of the Act. In fact, the AO before concluding the assessment proceedings under Section 143(3) of the Act had considered the said issue in detail and only thereafter allowed the said deductions. Consequently, we are of the opinion that in the present case, re-assessment has been initiated on



the basis of mere change of opinion – which is not permissible under the Act.

5. In any event, we find that re-assessment was initiated after expiry of four years from the end of the relevant assessment year and one of the conditions precedent in the first proviso to Section 147 of the Act had not been fulfilled in the present case. The first proviso to Section 147 which provides extended limitation for reassessment i.e. beyond the period of four years reads as under:-

“Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant Assessment Year, no action shall be taken under this section after the expiry of four years from the end of the relevant Assessment Year, unless any income chargeable to tax has escaped assessment for such Assessment Year by reason of failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that Assessment Year.”

6. From a plain reading of the above proviso, it is apparent that where an assessment under Section 143(3) has been made, as in the present case, no action can be taken under Section 147 of the Act, 1961 after expiry of four years from the end of the relevant Assessment Year unless two conditions are simultaneously fulfilled i.e. firstly, the AO must have reasons to believe the income chargeable to tax has escaped assessment and secondly, the AO must have reasons to believe that such escapement occurred either due to omission or failure on the part of the respondent-assessee to disclose fully and truly all material facts



necessary for its assessment [*See CIT vs. Rajesh Jhavery St*

Brokers Pvt. Ltd. (2007) 291 ITR 500 at 512; Haryana Acrylic Manufacturing Co. vs. CIT & Anr. (2009) 308 ITR 38 and Wel Intertrade P. Ltd. & Anr. Vs. ITO (2009) 308 ITR 22 (Delhi)].

7. Consequently, as the AO has failed to prove and establish that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, we are of the opinion that the present case is not covered by the Proviso to Section 147 of the Act. Accordingly, the present appeal, being bereft of merit, is dismissed in *limine*.

MANMOHAN, J

CHIEF JUSTICE

SEPTEMBER 20, 2010

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