



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

+ ITA 324/2009

Date of decision: 26th October, 2009

COMMISSIONER OF INCOME TAX Appellant
Through: Ms. P.L. Bansal, Adv.

versus

MS. SUSHMA KAPOOR Respondent
Through: Dr. Rakesh Gupta, Adv.
with Ms. Mahima Agrawal
and Ms. Rani Kiyala, Adv.

% **CORAM:**
HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether reporters of local papers 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?

J U D G M E N T

A.K.SIKRI, J. (ORAL)

1. While issuing notice in respect of three items, addition made by the Assessing Officer which were deleted by the CIT(A) and formed by the appeal. After hearing counsel for the parties we are of the opinion that all the issues are factual in nature where findings of facts are recorded in favour of the assessee herein and no question of law arises. It is demonstrated in the following manner:-

1. The Assessing Officer found that the assessee had already taken loan from the bank on which it had paid interest to the tune of Rs.40,51,126/-. On the



other hand assessee had granted certain interest advances. These advances were to the tune of Rs.39.65 lacs. The Assessing Officer was of the opinion that there was no business transactions with those who the assessee gave the loan advances and did not borrowed interest and, therefore, they had disallowed the proportionate interest which had been paid by the assessee to the banks in this manner and a sum of Rs.7,13,700/- was disallowed. The CIT(A), in appeal apart from other findings, recorded a categorical finding that the amount of advances made to the parties were paid advances and in any case they were given in the earlier years i.e. before the loan was taken on which interest was paid and, therefore, these trade advances were not given out of the loan taken by the assessee. This is clearly a finding of fact.

2. The Assessing Officer had disallowed expenses to the extent of Rs.10,00,000/- under Section 14A of the Income Tax Act. In appeal preferred by the assessee, the CIT (A) arrived at a finding that on the last date of accounting year the investment was only Rs.80,000/-. Another finding of fact which was recorded was that the investment was made in the preceding year and no part of investments were correlated with the borrowed funds. The CIT



found that investment made Zurich India Top 200 funds was advances from the loan and, therefore, only to this extent the interest could be disallowed under Section 14A of the Act. Following is the relevant discussion in this behalf as noted by the Tribunal as well:

“...The A.O. had made disallowance of Rs.10 lacs on ad hoc basis. We agree with the submissions of the Ld. A.R. that disallowance on ad hoc basis is not justified without placing any material on record to show as to how much borrowed funds had been invested in the shares. CIT(A) on the other hand on detailed examination has given a finding that borrowed funds had been utilized only for investment in Zurich Mutual Fund and Zurich India Top 200 Fund and accordingly has reduced the disallowance to Rs.107510/-.”

It is clear from the above that to the extent it could be proved that investment was made from the borrowed funds, the expenses have been disallowed under Section 14A of the Act, which is again based on finding of facts.

3. The assessee had claimed depreciation in respect of Flat No.801 and 802, International Trade Tower, Nehru Place. Assessee had claimed that she had half shares in both these flats and on all of these half shares depreciation was claimed. The Assessing



Officer disallowed 50% of the depreciation claim on the ground that two other firms namely M/s. PDK Stock and Securities and Ms/. Sidhi Vinayak Enterprises were also functioning from that address. However, CIT(A) reversed this finding and calculated that those two firms were in fact running from 296, Forest Lane, Neb Sarai, New Delhi. Income Tax Appellate Tribunal (ITAT) has confirmed this finding recorded by the CIT(A) in the following manner:

“The assessee submitted before CIT(A) that the business of Sidhi Vinayak Enterprises and M/s. PDK Stock & Securities were run from 296, Forest Lane, Neb Sarai, New Delhi. It was also pointed out that Miss Sheila Kapoor had expired on 23.8.1999 and her business had been inherited by Shri Punit Kapoor and accordingly, the same was being run from 296 Forest Lane. The A.O. had made disallowance without any material. The assessee had claimed 50% depreciation and only 50% of electricity expenses as she owned 50% of the premises CIT(A) was satisfied by the explanation and observed that the A.O. had no evidence to say that Shri Punit Kapoor and Smt. Sheila Kapoor were carrying on business from the said premises. He accordingly, deleted the addition aggrieved by which the revenue is in appeal before the tribunal.”



2. We thus find that no question of law, much substantial question of law, arises for consideration.

3. Dismissed.

A.K. SIKRI, J.

SIDDHARTH MRIDUL, J.

October 26, 2009
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