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

\+ **INCOME TAX APPEAL NO. 510/2012**

Date of decision: 16th September, 2014

CIT-I

..... Appellant

Through Mr. Rohit Madan, Advocate.

versus

M/S BHAGAT STEEL & FORGING PVT LTD.

..... Respondent

Through Nemo.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J. (ORAL):

The matter was adjourned to enable the counsel for the appellant-Revenue to ascertain the factual matrix and produce original records, which have been produced.

2. The Assessment Year in question is 2006-07 and the respondent-assessee had filed return declaring loss of Rs.3,67,316/- on 31st March, 2007.

3. The best judgment assessment order under Section 144 of the Income Tax Act, 1961 (Act, for short) dated 26th December, 2008 records that notices under Section 143(2) of the Act were issued and served by affixture on 28th November, 2007. Thereafter, questionnaire was issued on 31st April, 2008 along with notice under Section 142(1), but no compliance

was made. On 9th July, 2008, another notice was sent at the address of t assessee company, but there was no response. The assessment order states that the address of the respondent-assessee was confirmed from the data for the next Assessment Year, i.e., 2007-08 and notice was sent, but it was returned back unserved with the remark that no such company existed on the said address. Addition of Rs.90,00,000/- was made on account of fresh investments as details with regard to the same were not available. The Assessing Officer noticed that there was increase in liabilities of Rs. 83,26,284/-, but he did not make any adjustment or addition on the said account. The loss return of Rs.3,67,316/- was thus subjected to addition of Rs.90,00,000/- and the net income was assessed at Rs.86,32,684/-.

4. The respondent-assessee filed an appeal and the Commissioner of Income Tax (Appeals) in his order dated 30th August, 2010 has observed that notice served by affixture on 28th November, 2007 does not specify the witnesses who were present. Further, the respondent-assessee by 28th November, 2007 had already filed their income tax return for the Assessment Year 2007-08 on 12th November, 2007 indicating a different or new address. The Commissioner of Income Tax (Appeals) observed that the Assessing Officer should have verified the address from new return in view of the factual matrix, but he did not do so and even subsequent notices dated 31st January, 2008 and 9th July, 2008 were sent on the wrong or earlier address. Subsequently, notice dated 24th September, 2008 was

sent for appearance on 29th September, 2008 by speed post, but the sa notice could not be served on the respondent-assessee. However, Commissioner of Income Tax (Appeals) did not annul the assessment on this ground, but referred to the documents placed on record and the contention of the respondent-assessee that investment of Rs.90,00,000/- in the two sister concerns; Crown Developers of Rs.50,00,000/- and Crown Buildtech Private Limited of Rs.40,00,000/- could be easily explained. He observed that the payments were made by way of cheque or by bank transfer. The respondent-assessee had established sources in the form of secured loan from ICICI Bank of Rs.10.77 lacs, unsecured loan of Rs.12.25 lacs and advance of Rs.2 crores for sale of land from Amazing Realter Limited, unrelated and a third party. Accordingly, the addition was deleted on merits holding that the investment of Rs.90,00,000/- stands explained.

5. Aggrieved, Revenue preferred an appeal along with appeal against the order deleting penalty for concealment under Section 271(1)(c) of the Act. Paragraphs 6 to 8 of the order of the Income Tax Appellate Tribunal (Tribunal, for short) indicate that the Departmental Representative had proceeded and argued on the basis that the Commissioner of Income Tax (Appeals) had annulled the assessment, which is factually incorrect. As noticed above, the Commissioner of Income Tax (Appeals) examined merits and deleted the addition on merits.

6. When the matter had come up for hearing yesterday, we had asked

the counsel for the Revenue to state and consider whether t Commissioner of Income Tax (Appeals) had called for remand report on the contention raised by the respondent-assessee that investment of Rs.90,00,000/- was made from the advance received of Rs.2 crores from M/s Amazing Realter Limited. As noticed above, the original file has been produced before us. It is stated by the counsel for the Revenue that the agreement between the respondent-assessee and Amazing Realter Limited is not on record. What is available on record is letter dated 4th November, 2009 written by the Commissioner of Income Tax (Appeals) to the ITO, Ward 2(4). The said letter refers to the manner in which the service was effected without ascertaining the proper address of the respondent-assessee. The Assessing Officer was required to submit a remand report verifying the authenticity of facts on merits stated by the respondent-assessee. The Assessing Officer was required to verify the books of accounts as is done in scrutiny cases. In case any irregularity in the books of accounts was noticed, remedial action it was stated would be taken at the first appellate stage. The exact wordings in the second half of the said letter is as under:-

> "...You are therefore requested to verify the assessment records of the assessee and submit a Remand Report on the veracity of the facts given by the AR of the assessee, since I could not set aside the assessment to you. You should also verify the books of accounts of the assessee as is done in the routine manner in a scrutiny case. If you detect any

> irregularity in books of accounts, so that remedial action can be taken at the first appellate stage. We can retrieve any loss of revenue by our joint endeavour if you are together at this stage. You may feel free and bring the assessment records and let us discuss any point if anything comes to your mind after going through the return of income and the books of accounts of the assessee. Your Remand Report should reach the undersigned by 10th Dec., 2009 as the case is fixed for hearing on 15th Dec, 09. You may give assessee necessary opportunity to produce books of accounts and relevant documents before you."

7. The remand report it appears was submitted after a gap of more than six months by letter dated 24th June, 2010. The said remand report refers to the issue with regard to address and service of notice. It does not deal with the contention of the respondent-assessee on merits. It is silent on the said aspect. The remand report dated 24th June, 2010 also refers to reminder Nos. 286 dated 27th January, 2010 and 17 dated 19th April, 2010 enclosing therewith an application under Rule 46A of the Income Tax Rules, 1962. The said letters dated 27th January, 2010 and 19th April, 2010 are not available in the records though these letters must have been written by the Commissioner of Income Tax (Appeals) to the Assessing Officer as they have been mentioned by the Assessing Officer in his remand report dated 24th June, 2010. Copy of the application under Rule 46A of the Rules is also not available on record and we do not know what documents and particulars were filed.

8. Revenue was the appellant before the Tribunal and in case there was

any error or mistake as relevant papers had not been forwarded to t Assessing Officer for remand, this factum should have been highlighted. It was not stated and highlighted before the Tribunal why the remand report did not deal with the merits. The Tribunal in view of the factual finding recorded by the Commissioner of Income Tax (Appeals) and as the Revenue was not able to controvert and deny the said finding, had no option but to dismiss the appeal. The finding recorded in paragraph 8 of the order passed by the Tribunal reads as under:-

> "8. We have carefully considered the submissions of the learned DR. We have also carefully gone through the assessment order as well as the order passed by the CIT (A). The order passed by the Assessing Officer, as mentioned earlier is an ex parte order. There is a reference of remand proceedings in the order of CIT (A) in para 3.2 of his order, but, he has not mentioned whether or not the Assessing Officer has commented upon the merits of the additional evidence submitted by the assessee on facts that the source of the said amount of Rs.90 lac was advance received by the assessee of Rs.2 crore against sale of land to a third party. Though learned CIT (A) has referred that the first service of notice by affixture cannot be held to be valid, but, he has not quashed the assessment on this ground. Learned CIT (A) has deleted the addition on merits. Therefore, we find that the ground No. 1 raised by the department is misconceived. So far as it relates to merits, we found that the details which have been provided in the above part of this order clearly reveal that the source of the advance made by the assessee to its sister concerns is advance received against sale of land and thus investment made by the assessee with its sister concerns stands explained. No contrary evidence has been produced by the revenue to suggest that what has been held by learned CIT

> (A) is contrary to the facts. Therefore, we see no justification in interfering with the findings recorded by the learned CIT (A) that addition on merit was not sustainable. Therefore, we decline to interfere and the second ground raised by the revenue is also dismissed."

9. In view of the aforesaid factual position, we are not inclined to interfere with the order of the Tribunal. This case again reveals that the record maintenance by the Revenue is not of a desired and acceptable level. The file in question produced before us is page numbered, but it is apparent that several papers and documents are missing. The Revenue cannot claim that they had not received letters dated 27th January, 2010 and 19th April, 2010 and the application under Rule 46A as these are specifically mentioned by the Assessing Officer himself in his letter dated 24th June, 2010. The first letter asking for remand report is dated 4th November, 2009 and it took the Assessing Officer more than six months to respond to the said letter, but the response was not complete. It did not refer to the merits and only dealt with the question of change of address. In view of the aforesaid factual position, the appeal is dismissed.

SANJIV KHANNA, J.

V. KAMESWAR RAO, J.

SEPTEMBER 16, 2014
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