

(2010) 09 DEL CK 0189

Delhi High Court

Case No: IT Appeal No"s. 640 and 644 of 2010

Commissioner of Income Tax

APPELLANT

Vs

Sikka Overseas (P.) Ltd.

RESPONDENT

Date of Decision: Sept. 23, 2010

Acts Referred:

- Income Tax Act, 1961 - Section 254(2), 260A

Citation: (2010) 328 ITR 641

Hon'ble Judges: Dipak Misra, C.J; Manmohan, J

Bench: Division Bench

Advocate: Suruchii Aggarwal, for the Appellant; K.R. Manjani, for the Respondent

Final Decision: Dismissed

Judgement

Manmohan, J.

The present two appeals have been filed u/s 260A of the income tax Act, 1961 (for brevity "the Act") challenging the common judgment and order dated August 6, 2009 passed by the income tax Appellate Tribunal (in short "the Tribunal") in I. T. As Nos. 1480/Del/2008 and 799(Delhi)2009 for the assessment year 2005-06. It is pertinent to mention that while the first appeal is a quantum appeal, the second is a penalty appeal. However, as both the appeals arise out of a single judgment, they are being disposed of by a common order.

2. Ms. Suruchii Aggarwal, learned counsel for the Revenue pointed out that the respondent-assessee had neither produced the relevant documents before the Assessing Officer (in short, "AO") nor had made any request under rule 46A of the Rules for admission of the said documents as additional evidence. Consequently, Ms. Aggarwal submitted that the Tribunal had erred in law in holding that the respondent-assessee had produced all the relevant documents before the Assessing Officer especially when the Assessing Officer in his assessment order had stated that though confirmation from the director had been filed but no copy of bank

account and I. T. particulars had been furnished by the respondent-assessee before the Assessing Officer.

3. However, upon a perusal of the impugned order, we find that the final fact finding authority, namely, the Tribunal has found that the Commissioner of income tax (Appeals) (in short, "CIT(A)") had wrongly treated the papers filed by the respondent-assessee as new evidence when from the written submissions filed by the respondent-assessee before the Commissioner of income tax (Appeals), it was apparent that the said documents had been placed along with the paper book. Since this fact was not disputed by the Departmental representative, the Tribunal concluded that the said relevant papers along with a copy of confirmation and returns had been filed before the Assessing Officer.

4. During the course of hearing, we offered to Ms. Suruchi Aggarwal, learned counsel for the Revenue that if she would like to withdraw the present appeals to file an application u/s 254(2) of the Act. However, she stated that she had no instructions to make such a statement. In any event, in our opinion, the said finding can neither be disputed nor said to be perverse especially when the appeal paper book filed by the respondent-assessee before the Commissioner of income tax (Appeals) has not been filed along with the appeal.

5. Moreover, upon a perusal of the appeal paper book, we find that as the respondent-assessee director's identity was established and the transactions were not denied, the initial burden cast on the respondent-assessee stood discharged. Accordingly, the present quantum appeal, being bereft of merit, is dismissed. Since we are not inclined to interfere in the quantum appeal, the second appeal pertaining to penalty is also dismissed.