

(2004) 09 DEL CK 0132

Delhi High Court

Case No: IT Appeal No. 463 of 2004 10 September 2004

Intercorp Industries Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

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**Date of Decision:** Sept. 10, 2004**Citation:** (2005) 142 TAXMAN 408**Hon'ble Judges:** A.K. Sikri, J**Bench:** Division Bench**Advocate:** Prakash Kumar, for the assessed R.D. Jolly for the Revenue, for the Appellant;

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### Judgement

@JUDGMENTTAG-ORDER

This appeal is filed by the assessed against the order dated 25-11-2003 passed by Income Tax Appellate Tribunal. Dispute relates to two additions of Rs. 22,06,000 and 41,50,000 which were made by the assessing officer while assessing the income of the appellant herein. A perusal of the impugned order shows that before making these additions, the assessing officer had called upon the appellant to provide certain informations which appellant could not provide but wanted some more time for this purpose. The assessing officer refused to grant further time as assessment was getting barred by limitation. The appellant challenged the order of assessing officer before the CIT (A)-I, New Delhi who allowed the said appeal and deleted the additions made by the assessing officer u/s 68 of the Income Tax Act, 1961. Against the order of CIT, the appeal of the revenue filed by Income Tax Appellate Tribunal has been allowed vide impugned order and remanded the matter to the assessing officer for adjudicating the same afresh in accordance with law. The reason for remanding the case is acceptance of the request of the appellant itself before the assessing authority who wanted further time to produce the evidence as required by the assessing authority. This would be clear from the following part of the order: "When required by the assessing officer the assessed sought time to produce evidence but the time was not allowed for the reason that the assessment was

getting barred by limitation. It is Therefore, found that the assessed did not have reasonable and effective opportunity of producing the evidence and to discharge the onus that lay upon him. In that view of the matter we do not find any justification in deleting the addition by the learned CIT (A) on the basis of the half hearted enquiry and without proper appraisal of material and the facts of the case. The decision of the learned CIT (A) is Therefore set aside and the issue is restored back to the assessing officer for adjudicating the same afresh in accordance with law. Proper and effective opportunity of being heard to the assessed shall be given."

2. Thus, in fact, request of the appellant which was made before the assessing authority has been accepted and the appellant is given a chance to produce evidence and to discharge the onus that lay upon it. Therefore, no substantial question of law arises and we do not find any fault with the approach of the Income Tax Appellate Tribunal. Hence the appeal is dismissed.