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

% Judgment delivered on : 14.11.2008

\+ **ITA No. 1295/2008**

COMMISSIONER OF INCOME TAX-II ..... Appellant

-versus-

MANTEC CONSULTANTS (P) LTD ..... Respondent

Advocates who appeared in this case:

For the Appellant	:	Mr N. P. Sahani & Mr Prakash Chand Yadav
For the Respondent	:	Mr B. B. Bhagat, Mr Amit Bhagat and Mr Pulkit Gupta

CORAM :-

HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE RAJIV SHAKDHER

1. Whether the Reporters of local papers may be allowed to see the judgment ?
2. To be referred to Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. This appeal is directed against the order passed by the Income Tax Appellate Tribunal on 15.02.2008 in ITA No. 888/Del/2006 pertaining to the assessment year 2001-02. This matter has had

two rounds before the Tribunal. The issue pertains to the allowability of deduction under Section 10A of the Income Tax Act,1961 (hereinafter referred to as the said 'Act'). Although, no claim under Section 10A had been made before the Assessing Officer, the respondent/assessee had made such a claim before the Commissioner of Income-tax (Appeals). In the first instance, the assessee had claimed deduction under Section 80 HHE for which purpose Form No. 10CCAF was filed. However, in the course of appellate proceedings before the Commissioner of Income-tax (Appeals), the assessee filed Form 56 F which is required to be filed under Rule 16D of the Income Tax Rules, 1962 read with Section 10A (5) of the said Act for claiming deduction under Section 10A.

2. In the first round before the Tribunal, the issue whether the assessee was entitled to have raised a claim under Section 10A before the Commissioner of Income-tax (Appeals), for the first time, without having raised such a claim before the Assessing Officer, was considered. The Tribunal has, inter alia, held as under :-

> "…… It had filed report on prescribed form 10 CCAF along with the return. The report on form 56F required as per sec.10A of the Income-tax Act, was submitted before the learned CIT (A)

> who sent the claim of the assessee to the AO. The AO verified the claim and sent a detailed report. It is not shown that any condition of section 10A was held to be not fulfilled in the case except failure to file audit report on form 56F "along with the return". It has now been accepted by several High Court that provision relating to submission of audit report along with return are not mandatory but directory. In this connection, useful reference may be made to the decision of the Hon'ble Calcutta High Court in the case of CIT vs. Berger Paints (India) Ltd. (No.2) (2002) 254 ITR 503 as also the decision of the Hon'ble Kerala High Court in the case of CIT Vs. G Krishnan Nair, 259 ITR 727. This objection is not very material."

3. The Tribunal, by virtue of its order dated 10.06.2004, in the first round, also held :-

> "…… It is not the claim of the revenue that conditions of sec.10A were not satisfied in this case. The learned CIT (A) refused to entertain the claim of the assessee as an objection to the entertainment of above claim was raised by the AO. On a very technical ground, the plea of the assessee relating to the claim of Rs. 1,11,24,443/- was not admitted. On the facts and circumstances of the case, we are of the view that the learned CIT (A) failed to exercise jurisdiction duly vested in her, more particularly when all the material relating to the claim was available on record and was duly examined by the AO."

4. Consequently, the Tribunal was of the view that the assessee was fully justified in raising the claim under Section 10A of the said

Act, for the first time, before the Commissioner of Income-tax (Appeals), who ought to have entertained it and decided on merits as to whether the assessee was entitled to such a deductions. Consequently, the Tribunal set aside the impugned order and restored the matter to the file of the Commissioner of Income-tax (Appeals) for recording a finding relating to deductions claimed by the assessee under Section 10A of the said Act in accordance with law.

5. Thereafter, the Commissioner of Income-tax (Appeals) considered the matter and found that the assessee was entitled to the deductions claimed by it under Section 10A of the said Act. In the second round before the Tribunal, the issues which had been settled in the first round were sought to be re-agitated. In this regard, the Tribunal noted that it had entertained the fresh ground claiming 100 per cent deductions under Section 10A of the said Act and had remitted the matter to the Commissioner of Income-tax (Appeals) for adjudication. Consequently, the Tribunal held that the revenue could not re-agitate the issue after the Tribunal had already decided the same in the first round. The Tribunal also noted that there is no

dispute that the entire material was available on record and Form No. 56 F which had been filed, in the first round, had been admitted before the Commissioner of Income-tax (Appeals). Consequently, the Tribunal was of the view that the revenue, having accepted the order of the Tribunal in the first round, cannot raise those objections in the second round.

6. We see no infirmity in the order passed by the Tribunal, which is impugned before us. No question of law arises for our consideration. The appeal is dismissed.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

November 14, 2008
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