$~1

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

\+ ITA 274/2015, C.M. APPL.7358-7359/2015

BRIJWASI IMPEX PRIVATE LIMITED ..... Appellant
Through : Sh. Salil Aggarwal and Sh. Prakash Kumar, Advocates.

versus

COMMISSIONER OF INCOME TAX ..... Respondent
Through : Ms. Suruchii Aggarwal, Sr. Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K.GAUBA

O R D E R

% 01.05.2015

Issue notice. Ms. Suruchii Aggarwal, Advocate accepts notice.

The narrow ground on which the appellant/assessee assails the order of the Income Tax Appellate Tribunal (ITAT) in ITA No. 361/Del/2011 and CO No. 8/Del/2013 is that the impugned order was in error by refusing to consider the cross-objections and the grounds urged by the assessee/appellant.

For AY 2000-01, the original assessment had been completed. In the course of regular assessment for AY 2002-03, the Assessing Officer (AO) had the occasion to examine the veracity of certain entries claimed to be share application amounts received to the tune of ₹50 lakhs. The assessment was completed after appropriate enquiries were made from such share applicants on scrutiny basis under Section 143(3). Subsequently, search proceedings took place in

respect of the assessee's business premises on 09.12.2005. Notice was issued pursuant to which a return was filed on 31.10.2007 under Section 153A. The AO completed the assessment pursuant to the search on 31.12.2007 and added back the said amount of ₹50 lakhs. In the course of the appeal preferred to CIT(A), the assessee had *inter alia* urged as follows:

> *"3. On the basis of aforesaid factual position addition made on account of unexplained share application amounting to ₹.50,00,000/- for the A.Y. 2000-01 deserves to be deleted as:*
>
> *XXXXXX XXXXXX XXXXXX*
>
> *ii) No corresponding seized material, much less incriminating material was found in the course of search for the subjected addition. It may kindly be appreciated that the assessment u/s 153A on the basis of the search u/s 132 cannot and should not be equated to regular/normal scrutiny assessment u/s 143(3)."*

The CIT(A), however, did not discuss this issue but returned the finding in favour of the assessee which allowed the said deletion of ₹50 lakhs.

The Revenue appealed to the ITAT. The assessee filed cross-objection – though belatedly. By the impugned order, the ITAT refused to entertain the application under Rule 27 of the Income Tax (Appellate Tribunal) Rules, 1963, stating that the contention sought to be urged by it could not *inter alia* be entertained because it was never taken in the first instance before the CIT(A).

Learned counsel points out that a bare look at para 3(ii) of the

CIT's order would show that the ground was in fact urged and was accepted by the CIT(A) even though there was no discussion. It was submitted that the Revenue could not get hold of any material in the course of search and that the addition of ₹50 lakhs could not be made precisely on the basis of which CIT(A) granted relief. Learned counsel for the Revenue urges that the question as to whether and to what extent addition can be made in search proceedings should not be decided in this appeal since orders under Section 153A are wider that the pre-existing 158BC.

We have considered the submissions. For the purpose of this appeal, we do not propose to launch an examination of the difference between the phraseology of the old law and Section 153A. However, what is apparent is that further in regard to the assessee's contention that no material was found to support the addition – which was in fact gone into in scrutiny assessment, the ITAT was duty-bound to consider the submissions rather than brushing aside the cross-objections as it has done in the present instance. In the circumstances, the impugned order to the extent it denies the assessee the right to urge cross-objection is hereby set aside. The right of the parties to urge contentions in support of their submissions on the merits is reserved. The appeal is partly allowed in the above terms.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

MAY 01, 2015/ajk