IN THE HIGH COURT OF DELHI

(3)

ITA Nos.290, 319 & 321/2002

Date of Hearing & Decision : 31 March 2003

The Commissioner of Income-tax .....Appellant
Through: Mr. Sanjiv Khanna,
Sr.Standing Counsel

Versus

M/s. A. R. J. Security Printers .....Respondent
Through : Mr. B. Gupta, Advocate

CORAM:

THE HON'BLE MR.JUSTICE D.K. JAIN
THE HON'BLE MR.JUSTICE MADAN B. LOKUR

1. Whether reporters of local papers may be allowed to see the judgment.

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in the Digest?

D.K. JAIN, J.(Oral)

These three appeals, by the Revenue, under Section 260-A of the Income-tax Act, 1961 (for short 'the Act') are directed against the orders passed by the Income-tax Appellate Tribunal, New Delhi (for short 'the Tribunal) in ITA Nos. 2062/Del/96, 3676 & 3122/Del/97 and 3157/Del/99, pertaining to assessment years 1991-92, 1993-94, 1994-95

and 1996-97 respectively.

Since a common issue is involved in all the three appeals, these are being disposed of by this order.

The issue involved in the appeals is as to whether the assessee, engaged in the business of printing of lottery tickets, can be said to be an industrial undertaking engaged in the manufacture or production of articles or things and, therefore, entitled to deduction under Section 80-I of the Act.

Incidentally, in none of the assessment orders or in the order of the Tribunal we find any discussion on the issue. The Assessing Officers merely note that the claim preferred by the assessee under Section 80-I cannot be allowed because similar relief has been denied to them in respect of assessment years 1991-92 and 1992-93. Similarly, both the appellate authorities, while holding that the assessee was entitled to deduction under the said section, have relied on their earlier orders, particularly in respect of assessment year 1992-93.

We have heard Mr.Sanjiv Khanna, learned senior standing counsel for the Revenue and Mr.B.Gupta, learned counsel for the respondent.

Upon questioning by the Court, Mr.Khanna has candidly admitted that Tribunal's order for the assessment year 1992-93 has not

been challenged by the Revenue. He would, however, submit that since the issue involved is legal and the principle of res judicata does not apply to proceedings under the Act, these appeals may be entertained. On the other hand, Mr.Gupta, learned counsel for the respondent-assessee, points out that even in respect of assessment years 1995-96 and 1997-98 the Revenue has not challenged the orders passed by the Tribunal, holding that the assessee was entitled to tax concession under Section 80-I of the Act. It is urged that since in respect of three assessment years it has been accepted by the Revenue that the assessee is entitled to deduction under Section 80-I of the Act, in the absence of any change in the nature of assessee's business, the Revenue cannot be permitted to adopt a different stand in respect of the assessment years in question.

We find substance in the contention urged by learned counsel for the assessee. True that each assessment year being independent of the other, as a general rule, the principle of res judicata or estoppel by record, which applies to civil courts, does not apply to income tax proceedings but, yet for the sake of consistency and for the purpose of finality in all litigations, including litigation arising out of fiscal statutes, earlier decisions on the same question should not be reopened unless some fresh facts are found in the subsequent year. The Supreme Court in Radhasoami Satsang Vs. Commissioner of Income-tax

(1992) 193 ITR 321 observed that where a fundamental aspect permeating through different assessment years has been found as a fact one way or the other and the parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.

In our view, the aforenoted observations by the Apex Court are squarely applicable on the facts in hand. In the present cases, the same issue, namely, whether the assessee is entitled to relief under Section 80-I of the Act or not, was decided by the Tribunal in favour of the assessee in respect of assessment year 1992-93, which order has now been followed by the Tribunal while disposing of appeals for the three years in question. As noted above, the Assessing Officer disallowed assessee's claim only on the ground that similar claim had been disallowed in earlier years. No fresh material has been brought on record by the lower authorities, warranting fresh consideration. Admittedly, order of the Tribunal for assessment year 1992-93 has not been challenged by the Revenue. Similarly, orders of the Tribunal on the issue, pertaining to assessment years 1995-96 and 1997-98, have attained finality.

In the aforenoted factual background, we fail to appreciate as to how, when there is no change in the business of the assessee, relief under Section 80-I of the Act can be denied to them in respect of some of

the assessment years when similar relief is granted for previous and subsequent years. We are of the view that having accepted at least in three assessment years that the assessee's business activity fell within the ambit of Section 80-I of the Act, the Revenue cannot be allowed to now turn around and content that deduction under the said Section is not available to them in respect of the present assessment years.

In Union of India Vs. Satish Panalal Shah (2001) 249 ITR 221 the Apex Court has also deprecated the practice of the department in accepting the correctness of a judgment on a particular issue in one case and challenging its correctness in another case.

For the foregoing reasons, without going into the merits of the issue raised, we decline to entertain the appeals on this short ground. Dismissed.

D.K. JAIN, J.

MADAN B. LOKUR, J.

31 March 2003
'v'