



(5)

THE HIGH COURT OF DELHI AT NEW DELHI

ITA No.154/2003

Judgment delivered on: 21.09.2004

**DIRECTOR OF INCOME-TAX, INTERNATIONAL TAXATION,
NEW DELHI** ...Appellant

- versus -

M/S DUMEZ-SOGEA-BORIE-SAE ...Respondent

Advocates who appeared in this case:

For the Appellant : Mr Sanjeev Khanna
For the Respondent : Mr S.K. Bhattacharya with Mr K.R. Shukla

CORAM:-

**HON'BLE MR JUSTICE B.C. PATEL, CHIEF JUSTICE
HON'BLE MR JUSTICE BADAR DURREZ AHMED**

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 Digest?

B.C. PATEL, CJ (ORAL)

1. This appeal was placed before the Court for the first time on 09.07.2003 and the Court issued notice, returnable on 23.10.2003. On that date, Mr S.K. Bhattacharya requested the Court that as he has put in appearance on behalf of the respondent, time may be granted, and, the matter was adjourned

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to 12.01.2004. Thereafter, the matter was adjourned from time to time. Even today, when the matter was called out, a request was made for time. In this matter, the Tribunal recalled the entire order passed by it earlier and the learned counsel for the appellant submitted that the case is covered by the judgment of this Court and the following question of law is required to be answered by the Court:-

"Whether on the facts and in the circumstances of the case, the Income-Tax Appellate Tribunal exceeded its jurisdiction by recalling the order on an application under Section 254 (2) and in passing the impugned order?"

2. The decision is reported in 269 ITR 371 in the case of **Commissioner of Income-Tax v. Vichitra Construction (P) Ltd.**

The question requires no more discussion as the same is covered by the decision and we have held as under:-

"In view of the provisions and judicial pronouncement indicated hereinabove, we are of the view that the power to rectify a mistake under section 254(2) cannot be used for recalling the entire order. No power of review has been given to the Tribunal under the Income-tax Act. Thus, what it cannot do directly, cannot be allowed to be done indirectly. If the assessee was aggrieved, it was open for him to approach the appropriate forum but the Tribunal could not have reviewed the entire judgment delivered by it earlier in the garb of exercising its power under section 254 (2). Accordingly, the answer is required to be given in favour of the Revenue and against the assessee."



3. Hence, in view of above, the answer is required to be given in favour of the Revenue and against the assessee. Accordingly, the appeal is allowed.

Blair
CHIEF JUSTICE

Badar Durrez Ahmed
BADAR DURREZ AHMED, J

September 21, 2004
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