



IN THE HIGH COURT OF DELHI.

I.T.A.No.491/2004 and ITA No.662/2004

Date of Decision:- November 16, 2004

Commissioner of Income Tax.....Petitioner

Through:Mr.Sanjeev Khanna, Advocate.

Versus

M/s.Mayur Recreational and
Development Ltd.....Respondent

Through: Mr.P.N.Monga, Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR.JUSTICE BADAR DURREZ AHMED

- i) Whether Reports of the local papers may be allowed to see the judgment?
ii) To be referred to the Reporter or not?
iii) Whether the judgment should be reported in Digest?

B.C.PATEL, C.J. (ORAL)

1. In the present appeals, it is pointed out that the Income Tax Appellate Tribunal, Delhi Bench disposed of ITA No.2967/Del/95 for the assessment year 1992-93 on 12.12.2002. Subsequently, an application was moved under Section 254(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") by the assessee. An



appeal being ITA No.168/2003 was also filed by the assessee in this Court. During the pendency of the appeal, the Tribunal disposed of the assessee's application by passing an order dated 16.3.2004 recalling its earlier order of 12.12.2002. This fact was brought to the notice of this Court, which, disposed of the assessee's appeal (ITA No.168/2003) on 13.4.2003 as the appeal became infructuous, in view of the recall of order in its entirety. But, as the Revenue was aggrieved by the Tribunal's order dated 16.3.2004 recalling the earlier order dated 12.12.2002 in its entirety, it preferred the appeal (ITA No. 491/2004), inter alia, raising a question of law, whether the Appellate Tribunal exceeded its jurisdiction by recalling the entire order on an application under Section 254(2) of the Income Tax Act, 1961? This is the only question which is required to be answered by this Court in the appeal (ITA No. 491/2004). We may note that after the Tribunal's recall order dated 16.3.2004, the entire appeal was heard afresh by the Tribunal and it ultimately passed an order thereon

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on 11.6.2004. The Revenue, being aggrieved by this order has filed the appeal being ITA 662/2004. The question of admissibility of this appeal is dependant on the fate of the appeal being ITA No. 491/2004.

2. Insofar as ITA No. 491/2004 is concerned, we admit the same and, at the request of the counsel for the parties, take up the same for hearing straight away.

3. We heard learned counsel appearing for the parties. In the case of Commissioner of Income Tax v. Vichra Construction (P) Ltd. (2004) 269 ITR 371 this Court had examined an identical question in detail. This Court is of the opinion that the power conferred under Section 254 of the Act does not contemplate rehearing which would have the effect of re-writing an order affecting the merits of the case. Else there would be no distinction between a power to review and a power to rectify a mistake. What is not permissible under the statute cannot be indirectly done by recourse to section 254(2) of the Act. Statute deliberately confers the power to rectify the order and does not authorise



to review the order. The answer is required to be given in favour of the Revenue in affirmative and against the assessee.

4. In view of this, the order dated 16.3.2004 whereby the entire order dated 12.12.2002 has been recalled cannot be sustained. Accordingly, the appeal (ITA 491/2004) is allowed and the Tribunal's order dated 16.3.2004 is quashed and set aside.

5. The result of this is that, the order impugned in ITA 662/2004 would not survive as the order of the Tribunal is without jurisdiction and consequently, the appeal (ITA 662/2004) itself has become infructuous and is disposed of as such.

6. The learned counsel for the assessee submitted that in view of the order made by the Court today, he may be given liberty to revive the appeal being ITA No.168/2003 challenging the order made by the Tribunal on 12.12.2002. It goes without saying that after the answer which we have given with regard to the question raised by the Revenue, the
ITA 491 & 662/04 *BSH*



order made by the Tribunal on 12.12.2002 will remain and, therefore, the appeal (ITA No.168/2003) filed by the assessee is required to be revived. Ordered accordingly.

ITA No.168/2003

List on 6.12.2004.

Badar Durrez Ahmed
CHIEF JUSTICE

Badar Durrez Ahmed
BADAR DURREZ AHMED, J.

November 16, 2004
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