



HIGH COURT OF DELHI : NEW DELHI

+ **ITA No.195/2005**

Judgement reserved on: April 15, 2005

% Judgement delivered on: May 5, 2005

Commissioner of Income Tax

Delhi-II,

New Delhi

...Appellant

!

Through Ms. Prem Lata Bansal, Adv.

Versus

\$ M/s L G Electronic (India) Limited

221, Okhla Industrial Area Phase-III,

New Delhi

...Respondent.

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Through Nemo.

Coram:

* **HON'BLE MR. JUSTICE SWATANTER KUMAR**

HON'BLE MR. JUSTICE MADAN B. LOKUR

1. Whether the Reporters of local papers may
be allowed to see the judgement?

Yes

2. To be referred to Reporter or not?

Not necessary



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

Not necessary

* **MADAN B. LOKUR, J.**

The Revenue has preferred this appeal under Section 260-A of the Income Tax Act, 1961 against the order dated 22nd June, 2004 passed by the Income Tax Appellate Tribunal, Delhi, Bench SMC-I (for short the Tribunal) in ITA 529/Del/2001.

2. The only issue that has been raised is with regard to deduction for expenses claimed by the assessee which was disallowed by the Assessing Officer on the ground that the assessee had not commenced its business during the assessment year. The claim of the assessee pertains to expenses incurred on traveling and conveyance, rent, telephone expenses, brokerage, maintenance and sales promotion.



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3. The Assessing officer was of the view that the business of the assessee would commence with the first purchase of stock in trade and since no trading activities had taken place, the assessee could not request for capitalization of the expenses incurred.

4. On appeal, the Commissioner of Income Tax (Appeals) [hereinafter referred to as CIT(A)] set aside the view of the Assessing Officer. The CIT (A) noted that there was a distinction between commencement of business and setting up of business and the two dates need not necessarily overlap. It was held that Section 3 of the Income Tax Act refers to the date of setting up the business and as such it is only thereafter that the previous year of the newly set up business would commence. It was held that the expenses incurred prior thereto could be taken into account for the purposes of determining the profits of a newly set up business.



5. Feeling aggrieved by the order passed by the CIT (A) the Revenue preferred an appeal before the Tribunal which upheld the order of the CIT (A). It was noted that the business of the assessee was set up on 21st February, 1997 and that in view of the definition of the expression "previous year" as appearing in Section 3(1) of the Act the previous year shall be the period beginning with the date of setting up the business.

6. Feeling aggrieved, the Revenue has preferred the present appeal.

7. Section 3(1) of the Act reads as follows:-

3. "*Previous year*" defined.-(1) Save as otherwise provided in this section, "previous year" for the purposes of this Act, means the financial year immediately preceding the assessment year:

Provided that, in the case of a business or profession newly set up, or a source of income newly coming into existence, in the



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said financial year, the previous year shall be the period beginning with the date of setting up of the business or profession or, as the case may be, the date on which the source of income newly comes into existence and ending with the said financial year.

(2) xx xx xx

(3) xx xx xx”

8. The definition of the expression “previous year” is quite clear and does not admit of any meaning which could be said to be in favour of the Revenue. A bare perusal of the Section shows that there is hardly any question of law that arises in this case, much less any substantial question of law relating to interpretation.


9. There is no doubt that the date of setting up a business and the date of its commencement could be two separate dates. Section 3(1) of the Act, as it stood at the relevant time (and even as it



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stands today) has reference to the date of setting up the business. The CIT (A) and the Tribunal merely relied on the explicit language of the Section to come to the conclusion that the view of the Assessing Officer was incorrect. This being the clear position, we do not find any infirmity in the impugned order nor does it raise any substantial question of law.

10. Dismissed.



(Madan B. Lokur)
Judge

May 5, 2005

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(Swatanter Kumar)
Judge

Certified that the corrected copy of the judgment has been transmitted in the main Server.


PS
5/5/05