




Date

Orders

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 930/2005

COMMISSIONER OF INCOME TAX Appellant

Through Ms. P.L. Bansal

versus

M/S D.C.M. LTD. Respondent

Through Mr. Santosh Agarwal

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

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22.08.2006

The Revenue is aggrieved by an order dated 2nd August, 2004 passed by the Income Tax Appellate Tribunal, Delhi Bench "F" in ITA No.3825 and 1511(Del)92. (filed by the Assessee) relevant for the assessment year 1987-88 and ITA No.2687(Del)92 (filed by the

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Revenue) relevant for the assessment year 1987-88.

The Revenue is aggrieved by the order of the Tribunal and has formulated as many as five questions for our consideration.

When the appeal was first listed for hearing on 5th October, 2005, learned counsel for the Appellant was required to inform the Court whether any appeal has been filed against orders passed by the Tribunal for the assessment years 1981-82 to 1986-87 which have been relied upon by the Tribunal.

On 7th February, 2006, learned counsel for the Appellant again took time to find out whether the Revenue has challenged the orders passed by the Tribunal in respect of the aforesaid assessment years.

Today, learned counsel for the Appellant is unable to tell us whether the orders of the Tribunal have been accepted by the Revenue or not. On the other hand, learned counsel for the Assessee has placed before us a chart wherein it has been indicated that the orders of the Tribunal in respect of the earlier assessment years have been accepted



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by the Revenue and essentially in respect of the questions raised, the Tribunal has effectively remanded the matter back to the Assessing Officer for de novo adjudication.

The first question question that has been raised by the Revenue is as follows:

- a) Whether the ITAT was correct in law in remanding the issue with respect to addition of Rs.1,07,17,623/- made by the Assessing Officer on account of under valuation of closing stock of raw material, back to the Assessing Officer to decide afresh?

It appears that the Tribunal restored the matter to the Assessing Officer following its earlier decision for the assessment year 1986-87 and according to the learned counsel for the Assessee this order has been accepted by the Revenue.

The second question raised by the Revenue is as follows:

- (b) Whether the ITAT was correct in law in holding the issue with respect to allowability of investment allowance of Rs.2,05,87,070/- as academic and in not deciding the same on the ground that the same is to be decided in the year in which it is to be allowed?

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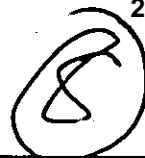



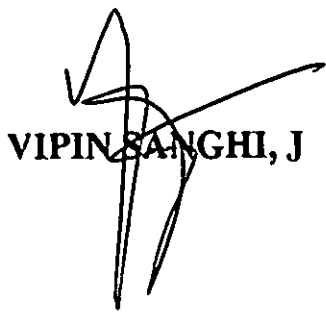
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		<p>Learned counsel for the Revenue says that since the question is academic she does not press this question.</p> <p>The third question raised by the Revenue is as follows:</p> <p>(c) Whether the ITAT was correct in law in allowing investment allowance to the assessee on machinery costing Rs.14,67,156/- installed in data product division despite the fact that no investment allowance reserve was created by the assessee?</p> <p>Learned counsel for the Assessee states that the Commissioner of Income Tax (Appeals) and the Tribunal followed their earlier orders in proceedings for the assessment year 1986-87 which have been accepted by the Revenue. In any case, learned counsel for the Revenue states that she does not press this question.</p> <p>The fourth question raised by the Revenue is as follows:</p> <p>(d) Whether the ITAT was correct in law in remanding the matter back to the Assessing Officer with respect to allowability of retrenchment compensation amounting to Rs.2,76,811/-, provision for retrenchment compensation amounting to Rs.53,598/- and provision for leave salary amount to Rs.45,099/-, to decide afresh?</p>

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		<p>Again, learned counsel for the Respondent points out that the earlier decision of the Tribunal on this issue for the assessment year 1986-87 has been accepted by the Revenue and the matter has been restored to the Assessing Officer. The order of the Tribunal has been accepted by the Revenue.</p> <p>The fifth question urged is as follows:</p> <p>(e) Whether the ITAT was correct in law in remanding back the issue of deduction of Rs.1,04,08,818/- being additional fuel surcharge liability in the year under consideration despite the fact that the bills were raised by RSEB in the subsequent year and the amount was also paid in the subsequent year?</p> <p>In respect of this question, learned counsel for the Assessee states that the Commissioner of Income Tax (Appeals) has decided the issue in favour of the Assessee for the assessment year 1984-85. The Revenue had filed an appeal before the Tribunal being ITA No.4429/1991 which was dismissed on 30th August, 2001 following orders passed in respect of assessment year 1982-83 in ITA No.4159/1987 decided on 10th</p>



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		<p data-bbox="319 235 1428 392">December, 1991. Both these decisions of the Tribunal have been accepted by the Revenue.</p> <p data-bbox="319 448 1428 705">The sixth question that has been urged by the Revenue being general in nature does not call for our consideration. Therefore, we find no merit in the appeal and it is dismissed.</p> <p data-bbox="973 795 1428 929"> MADAN B. LOKUR, J</p> <p data-bbox="1005 996 1332 1310"> VIPIN SANGHI, J</p> <p data-bbox="327 1176 638 1288">AUGUST 22, 2006 Upreti</p>