



\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 680/2005

COMMISSIONER OF INCOME TAX ..... Appellant  
Through Ms. P.L.Bansal, Advocate  
versus

M/S E FUNDS INTERNATIONAL INDI ..... Respondent  
Through Mr.Manish Kumar, Advocate

CORAM:  
HON'BLE MR. JUSTICE MADAN B. LOKUR  
HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R  
12.09.2006

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The Revenue is aggrieved by an order dated 1<sup>st</sup> December, 2004 passed by the Income Tax Appellate Tribunal, Delhi Bench, SMC-1 in ITA No. 2498/Del/2002 relevant for the assessment year 1998-99.

The assessee was incorporated on 14<sup>th</sup> July, 1997 and is engaged in the business of information technology services such as software development/consultancy, business process management, electronic banking schemes etc.

It filed a return on 26<sup>th</sup> November, 1998 claiming a loss of about Rs. 4.4. crores. The assessee was asked to explain why the expenses claimed in the profit and loss account be not disallowed, as the only receipt of income of the assessee was on account of interest which was taxable as income from other sources. The assessee filed its reply but that was not acceptable to the Assessing Officer



who passed an assessment order computing the income of the assessee at Rs 3,68,950/-. It was held that the assessee had not suffered any loss during the relevant previous year since it had not commenced its business activities in the previous year relevant to the assessment year.

The assessee filed an appeal before the Commissioner of Income Tax (Appeals) which was allowed.

Feeling aggrieved, the Revenue preferred an appeal before the Tribunal and that appeal was dismissed and that is how the Revenue is before us under Section 260A of the Income Tax Act, 1961.

The Tribunal has relied upon the order passed by the CIT(A) and in fact has more or less adopted the reasoning given by the First Appellate Authority.

It has been noted that the assessee had employed as many as 30-40 employees for the purposes of developing software and had acquired requisite infrastructure such as premises, utilities etc. during the previous year relevant to the assessment year. It must be remembered that the assessee was in the business of developing software and that cannot be an overnight exercise. The assessee had put consistent efforts for developing the software and it is only thereafter that the assessee was able to procure some business. It is possible that the assessee may not have earned any income during the relevant previous year but the fact that the assessee had taken all steps necessary to obtain business including efforts for marketing itself shows that the assessee had commenced business in the relevant



previous year. Apart from the aforesaid, it had also shown pre incorporation expenditure of Rs. 11.32 crores as having been expended for the purposes of setting up its business. The Tribunal has noted that none of the factual findings that have been arrived at by the CIT (A) were controverted by the Revenue in appeal. The assessee had also produced some additional evidence before the CIT (A) and even this was neither objected to nor controverted by the Revenue.

Under these circumstances, the Tribunal did not find it appropriate to interfere with the order passed by the CIT (A).

Learned counsel for the Revenue has relied upon *Commissioner of Income Tax vs. Mohan Steel Ltd.*, (2005) 273 ITR 479 to contend that business activities should have been started by the assessee in the relevant previous year. There is no quarrel with the legal proposition laid down in this decision. However, having gone through the judgment relied upon by learned counsel, we find that the factual scenario in the present case is completely different. In so far as the present case is concerned, as already pointed out, the assessee was in the business of developing software and it is for this purpose that it had acquired certain infrastructure facilities and had also employed as many as 30 to 40 persons in the relevant previous year who were required to provide the necessary intellectual input for developing the software. It cannot be compared with manufacturing activities as was the situation in the case of *Mohan Steel Ltd.* (supra).

We are of the view that under these circumstances, no substantial question



of law arises for our consideration given the factual matrix of the case.

Dismissed.

A handwritten signature in cursive script, appearing to read 'Madan Lokur'.

MADAN B. LOKUR, J

A handwritten signature in cursive script, appearing to read 'Vipin Sanghi'.

VIPIN SANGHI, J

SEPTEMBER 12, 2006

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