



IN THE HIGH COURT OF DELHI AT NEW DELHI

3

ITA 842/2005

COMMISSIONER OF INCOME TAX Appellant
Through : Mrs. P.L. Bansal, Mr. V. Sharma, Adv.

versus

M/S HIND POCKET BOOKS Respondent
Through : Mr. Bharat Beriwal, Adv.

CORAM:

HON'BLE MR. JUSTICE T.S. THAKUR

HON'BLE MR. JUSTICE B.N.CHATURVEDI

ORDER

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15.02.2006

ADMIT. Mr. Beriwal appears for the respondents. With consent, this appeal has been heard for final disposal at the stage itself.

For the assessment year 2000-01, the assessee claimed a deduction of Rs.9,44,950/- towards expenditure incurred by it on the education and training of Miss Priyanka, daughter of the Managing Director of the Company in a University outside the country. The assessee claimed that since Ms. Priyanak had agreed to serve the Company after completing her studies and was in reality serving the company, the expenditure incurred on her education abroad was an admissible business expenditure. The Assessing Officer, however, declined to accept that submission and added back the



4

amount of Rs.9.44.950/- to the taxable income of the Company. In an appeal against the said addition, the Commissioner of Income Tax (Appeals) concurred with the view taken by the Assessing Officer and affirmed the addition. A further appeal taken by the assessee to the Tribunal has however succeeded in terms of the order impugned in this appeal. Before the Tribunal, it was pointed out by assessee that the Commissioner of Income Tax (Appeals) had, for a subsequent assessment year, i.e. 2001-02, allowed the deduction in terms of his order dated 19th September, 2003. The Tribunal was, in the light of the said order, of the view that the Commissioner of Income Tax (Appeals) having allowed the deduction for the assessment year 2001-02, should have taken note of the said order while disposing of the appeal for the assessment year 2000-2001. In as much as the CIT (Appeals) had not done so, a contradiction had arisen between the two orders passed by the same authority. The Tribunal has, on that premise, remitted the matter back to the CIT (Appeals) for a fresh order in accordance with law.

Appearing for the Revenue, Mrs. Bansal argued that the order passed by the Tribunal suffers from a basic fallacy in as much as the Tribunal appears to have proceeded on the assumption that the order passed by the CIT (Appeals) for the assessment year 2001-02 had attained finality so as to bring in considerations of consistency which the said authority ought to maintain in fact situations that are similar. She submitted that the Revenue had, aggrieved of the



5

order passed by the CIT (Appeals) for the assessment year 2001-02, preferred an appeal before the Tribunal which was pending before the Tribunal on the date the order impugned in this appeal was passed. The Tribunal has not, however, adverted to the said appeal or noticed its pendency. The proper course, according to the learned counsel, was for the Tribunal to take up the two appeals together and decide whether the expenditure incurred by the assessee was an admissible business expenditure instead of remanding the matter back to the Commissioner for passing a fresh order.

There is, in our opinion, considerable merit in the submission of Mrs. Bansal. The order passed by the CIT (Appeals) for the assessment year 2001-02 had, no doubt, allowed the deduction claimed by the assessee for the purpose indicated earlier but the said order had not attained finality and was under challenge before the Tribunal in the appeal filed by the Revenue. The question whether the deduction claimed by the assessee was legally admissible was, therefore an issue that had to engage the attention of the Tribunal. Even for the assessment year 2000-01, the question was whether the expenditure incurred by the assessee on the education of the daughter of the Managing Director could be allowed as an admissible business expenditure. Instead of remanding the matter back to the Commissioner for a fresh order, the Tribunal could have resolved the issue itself by taking up the two appeals together for hearing and disposal. This would have avoided not only unnecessarily



6

procrastination of the matter implicit in a remand but prevented multiplicity of legal proceedings.

In the result, therefore, we allow this appeal; set aside the order passed by the Tribunal and remit the matter back to the Tribunal for hearing and disposal on merits along with the appeal preferred by the Revenue for the assessment year 2001-02. The particulars of the said appeal shall be furnished by counsel for the Revenue before the Tribunal at the appropriate stage.



T.S. THAKUR, J



B.N. CHATURVEDI, J

FEBRUARY 15, 2006
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ITA 842/2005

page 4 of 4