



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 871/2006

COMMISSIONER OF INCOME TAX Appellant
Through Mrs. P.L. Bansal with
Mr. Vishnu Sharma

versus

M/S MUTHOOT M. GEORGE BANKERS Respondent
Through

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

% 04.09.2006

The Revenue is aggrieved by an order dated 30th September, 2005 passed by the Income Tax Appellate Tribunal, Delhi Bench 'C' in ITA No. 1709/Del/2002 relevant for the assessment year 1998-99.

In paragraph 3 of the impugned order, the Tribunal has stated that the issue raised in the case of this Assessee is squarely covered in



favour of the Assessee and against the Revenue by a decision of the Tribunal rendered on 21st September, 2005 in the case of M/s. Muthoot Financiers vs. DCIT in ITA No.1707-Del of 2002 and in the case of M/s. Muthoot Bankers vs. DCIT in ITA No.1708/Del of 2002.

In view of this conclusion stated by the Tribunal, on 11th July, 2006 we had requested learned counsel for the Appellant to check up whether the order passed by the Tribunal, as mentioned in paragraph 3 of its order has been accepted by the Revenue or not and if it has not been accepted by the Revenue then the result of the appeal.

Today learned counsel for the Appellant tells us that the decision referred to in paragraph 3 of the Tribunal has been accepted by the Revenue.

Learned counsel for the Appellant submits that even though it is so, there is no res judicata or estoppel applicable to the statutory provisions and the Revenue is entitled to file an appeal.



We find that the Revenue has given absolutely no reason why in respect of two assesseees it has accepted the order passed by the Tribunal and in respect of this assessee it has not accepted the order of the Tribunal which merely follows the two other orders.

This Court has time and again taken the view that there must be some consistency in the stand of the Revenue and they cannot pick and choose cases in which to file an appeal in respect of some assessee and not to file an appeal in respect of identical orders in respect of another assessee. This view has also been expressed by the Supreme Court on several occasions and despite that we find that the Revenue insists upon taking such arbitrary decisions for which there is no iota of justification. If the Revenue puts forward some reason for its differential treatment, that will, of course, be considered on merits but in this particular case there is no such reason except to say there is no res judicata or estoppel. The rule of consistency must be followed by the Revenue, which they



have failed to do in this particular case.

Consequently, we find that no substantial question of law arises
in this case.

Dismissed.


MADAN B. LOKUR, J


VIPIN SANGHI, J

SEPTEMBER 04, 2006
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