



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 269/2002**

THE COMMR OF INCOME TAX Appellant
Through **Mr.R.D.Jolly with Mr. Ajay Jha,**
Advocates

versus

M/S NESTLE INDIA LTD Respondent
Through **Mr.M.S.Syali, Sr.Advocate with**
Mr.Satyen Sethi, Mr.Saubhagya
Aggarwal & Mr.Asit K.Dass,
Advocates

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

ORDER
06.07.2006

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For orders see ITA No. 195/2002.

MADAN B. LOKUR, J

VIPIN SANGHI, J

JULY 06, 2006

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Through Mr.R.D.Jolly with Mr. Ajay Jha, Advs.
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The Revenue is aggrieved by an order dated 19th September, 2001 passed by the Income Tax Appellate Tribunal, Delhi Bench 'B' in ITA No. 3862/Del/96 for the relevant Assessment Year 1991-92 and other connected appeals.

It appears that for the assessment year 1984-85, the Assessee changed its method of accounting for the purpose of valuation of its closing stock by excluding the excise duty on goods that were cleared but not sold. The correctness of this action was questioned by Assessing Officer, who did not accept the Assessee's change in its method of accounting. The Commissioner of Income Tax (Appeals) rejected the Assessee's appeal. However, the Assessee succeeded before the Tribunal. The decision of the Tribunal is reported as ***Income Tax Officer vs. Food Specialities Ltd, [1994] 49 ITD 21.***

Our order sheets show that on earlier occasions it was stated



that the Revenue had filed an application under Section 256(1) of the Income Tax Act seeking reference of a question of law that had arisen as a result of the decision of the Tribunal. The details with regard to that application were not placed before this Court despite several opportunities and eventually on 24th October, 2005 it was directed that in case appropriate orders are not passed by the Tribunal in respect of the application under Section 256(1) of the Act, learned counsel for the Revenue shall argue the present appeal. The Revenue was granted liberty to seek expeditious disposal of the pending application before the Tribunal.

Today, it has been brought to our notice that the application is not traceable and it is for this reason that we have proceeded to hear this appeal.

In the case before us, the Assessee raised submissions before the Tribunal to the effect that the departmental authorities had erred in not accepting the Assessee's method of valuing the closing stock, and also the alternative submission that the excise duty paid had to be deducted from the valuation of the stock in order to give full effect to the provisions of Section 43B of the Act.

In so far as the first submission is concerned, it was not canvassed before us being a subject matter of proceedings relevant to the assessment year 1984-85. Since that issue is not before us today, we do not propose to comment on it. It is only the alternate submission



that has been canvassed before us.


We find from the order passed by the Tribunal that the alternate issue had earlier arisen in **Indian Communication Network Pvt. Ltd. vs. IAC, [1994] 206 ITR (AT) 96 (Delhi)**. The decision of the Tribunal in **Indian Communication Network Ltd.** was followed by a Special Bench of the Tribunal in the case of the Assessee itself. The decision in the case of the Assessee is reported as **[1994] 49 ITD 21**.

Learned counsel for the Assessee brought to our notice that in the decision of the Supreme Court in **Berger Paints India Ltd. vs. Commissioner of Income Tax, [2004] 266 ITR 99** the Supreme Court has noted at page 104 that the decision of the Special Bench of the Tribunal in **Indian Communication Network Pvt. Ltd.** has not been challenged by the Revenue and this fact is not disputed by the Revenue.

Under the circumstances, since the Revenue has already accepted the decision which is the foundation of the conclusion arrived at by the Tribunal in the present case, we are of the view that no substantial question of law arises for our consideration.

Dismissed.


MADAN B. LOKUR, J


VIPIN SANGHI, J

July 06, 2006
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