



* IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of decision: October 10, 2007

+

ITA 248 of 2007

COMMISSIONER OF INCOME TAX Appellant

Through Ms. Prem Lata Bansal with
Ms. Rashmi Chopra, Advocate

versus

FLAMINGO FINANCE AND INVESTMENT Respondent

Through Mr. Ajay Vohra with Ms. Kavita Jha, Advocate

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE DR. JUSTICE S. MURALIDHAR

ORDER

For orders see ITR 35 of 1995.


MADAN B. LOKUR, J



S. MURALIDHAR, J

OCTOBER 10, 2007

rk



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

% Date of decision: October 10, 2007

+ **ITR 35 of 1995**

COMMISSIONER OF INCOME TAX Petitioner

Through Ms. Prem Lata Bansal with
Ms. Rashmi Chopra, Advocates

versus

FLAMINGO FINANCE AND INVESTMENT Respondent

Through Mr. Ajay Vohra with Ms. Kavita Jha, Advocate

and

+ **ITA 248 of 2007**

COMMISSIONER OF INCOME TAX Petitioner

Through Ms. Prem Lata Bansal with
Ms. Rashmi Chopra, Advocate

versus

FLAMINGO FINANCE AND INVESTMENT Respondent

Through Mr. Ajay Vohra with Ms. Kavita Jha, Advocate

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

ORDER



Act, 1961 (hereinafter referred to as 'the Act') and appeal (ITA 248/2001).

under Section 260-A of the Act have chequered backgrounds.

2. Initially an assessment was framed by the Assessing Officer ('AO') accepting the return of the Assessee declaring a loss of Rs.6,721/-.

3. In respect of the assessment order, the Commissioner of Income Tax ('CIT') exercising powers conferred by Section 263 of the Act by an order dated 1st December, 1988 took the view that the assessment order was erroneous and prejudicial to the interests of the Revenue. By the said order, which was passed after hearing the Assessee, the CIT remanded the matter to the AO with the direction to reframe the assessment after making relevant and appropriate enquiries with respect to the unexplained share capital which was stated to have been introduced in the Assessee's books.

4. Against the order passed by the CIT, the Assessee preferred an appeal to the Income Tax Appellate Tribunal (for short the Tribunal). By an order dated 29th September, 1992 the Tribunal quashed the order passed by the CIT under Section 263 of the Act. In ITR No. 35/1995, which arises from the order dated 29th September, 1992 of the Tribunal, relevant to the Assessment Year 1984-85, the following question has been referred for our opinion:

“Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in quashing



5. Meanwhile, pursuant to the order of the CIT passed under Section 26 of the Act, the AO re-framed the assessment at a total income of Rs.13,93,210/- after making an addition of Rs.14 lakhs on account of unexplained share capital.

6. The assessment order passed by the AO was challenged by the Assessee before the CIT(A). The CIT (A) deleted the addition by an order dated 20th January, 1992 on the basis of the judgment of this Court in *Commissioner of Income Tax v. Stellar Investment [1991] 192 ITR 287*.

7. Against the order passed by the CIT (A), the Revenue preferred an appeal before the Tribunal. By its order dated 13th February, 1998 the Tribunal set aside the order passed by the CIT and restored the matter back to the file of AO to decide the issue afresh in the light of the decision of the Full Bench of this Court in *Commissioner of Income Tax v. Sophia Finance Limited [1994] 205 ITR 98*.

8. Pursuant to the order dated 13th February 1998 passed by the Tribunal, the AO on 23rd January, 2001 once again made the addition of Rs.13,99,930/- on account of unexplained share capital. This was the third order passed by the AO in the matter.

9. In the meanwhile, aggrieved by an order dated 13th February, 1998



before the Tribunal for rectification of that order. This rectificatic application was allowed by the Tribunal by an order dated 11th June, 2002 whereby the Tribunal recalled its order dated 13th February, 1998. This order dated 11th June, 2002 of the Tribunal recalling its order dated 13th February, 1998 has not been challenged by the Revenue. Thus, the order dated 13th February, 1998 of the Tribunal no longer subsists.

10. Pursuant to the order dated 11th June, 2002 on the rectification application, the Tribunal passed the following consequential order in the appeal:

“In the light of these facts and the material on record, it is obvious that the order of the CIT u/s 263 which constituted the basis for making addition by the AO itself has been quashed by the Tribunal. Therefore, the structure on which the building was erected by the AO ceases to exist. Consequently, all the further actions flowing out of the said order are valid. We, therefore, uphold the action of the CIT (A).”

11. The admitted position is that even the order passed by the Tribunal on 20th August, 2002 has not been challenged by the Revenue.

12. Consequently, the question whether the order passed by the CIT under Section 263 of the Act on 1st December, 1998 is sustainable or not has become academic.

13. Under the circumstances, the reference in ITR No. 35 of 1995 is



aggrieved by the order dated 1st June, 2006 passed by the Tribunal which in turn affirms the order dated 10th February, 2003 passed by the CIT (A) deleting the addition made by the AO in the third order of assessment.

15. With the order dated 13th February, 1998 having being recalled by the Tribunal by its order dated 11th June, 2002, the re-assessment order passed by the AO on 23rd January, 2001 in the third round is rendered infructuous. All consequential appellate proceedings and orders are also rendered infructuous. Therefore, the entire exercise of ascertaining whether the order of the Tribunal dated 1st June 2006 is purely academic. We are, therefore, of the view that no substantial question of law arises in ITA No. 248/2007. It is, accordingly, dismissed.

16. At this stage, learned counsel for the Revenue submits that copies of the order passed by the Tribunal on 1st June, 2006 recalling the order dated 13th February, 1998 as well as the order dated 20th August, 2002 have not been received by the Revenue and further that since the order dated 1st June, 2006 has been made beyond the statutory time period stipulated, it should not be taken note of.

17. We are not inclined to go into this issue. It is open to the Revenue, if it is aggrieved by orders dated 1st June, 2006 and 20th August, 2002 to take



18. Accordingly, the reference is returned unanswered and the appeal dismissed.

MADAN B. LOKUR, J

S. MURALIDHAR, J

OCTOBER 10, 2007

rk