



* HIGH COURT OF DELHI : NEW DELHI ✓

+ ITA No.469 of 2007

% Decided on: April 07, 2008

DCM Benetton India Ltd.
Infinity Towers
DLF Cyber City, Phase-II
Gurgaon (Haryana)

...Appellant

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

Versus

The Commissioner of Income Tax
New Delhi.

...Respondent

Through Mrs. P.L. Bansal, Adv.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

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



MADAN B. LOKUR, J. (ORAL)

Admit.

2. After hearing learned counsel for the parties, the following substantial question of law is framed for consideration: -

Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal erred in law in not admitting the additional ground raised by the Assessee in respect of the expenditure incurred to the extent of Rs.13,10,566/- shown in the balance sheet for the assessment year 2003-2004 as prior period expenses pertaining to the assessment year 2001-2002?

3. Filing of the paper books is dispensed with.

4. The Assessee is aggrieved by an order dated 28th July, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench 'G' in ITA No. 123/D/2004 relevant for the Assessment Year 2001-2002.

5. The Assessee had incurred an expenditure of an amount of Rs.13,10,566/- as business expenditure. This was shown by the Assessee as a prior period expenditure in its balance sheet for the previous year relevant to the assessment year 2003-2004. However, the expenditure pertained to the previous year relevant to the assessment year 2001-2002.

6. The issue was, therefore, not raised by the Assessee before



the Assessing Officer when its assessment for the assessment year 2001-2002 was being completed nor was it raised before the Commissioner of Income Tax (Appeals) [CIT(A)].

7. Before the Income Tax Appellate Tribunal (the Tribunal), the Assessee sought to raise an additional ground in this regard but this was declined by the Tribunal on the ground that the accounts of the Assessee were audited and finalized on 5th August, 2003 whereas the order was passed by the CIT (A) on 30th September, 2003. Consequently, according to the Tribunal, the Assessee could have raised this ground before the CIT (A) but did not do so. Under the circumstances, the Tribunal declined to permit the Assessee to raise the additional ground by relying upon the decision of the Supreme Court in *National Thermal Power Co. Ltd. v. Commissioner of Income Tax*, [1998] 229 ITR 383 as well as the decision of the Andhra Pradesh High Court in *Commissioner of Income Tax, A.P. v. Gangappa Cables Ltd.*, [1979] 116 ITR 778. It was further held by the Tribunal that since the facts were not before the Tribunal, it could not adjudicate the claim.

8. Learned counsel for the Assessee submits that under these circumstances, even though the expenditure incurred by the Assessee is a genuine expenditure, it cannot get the benefit thereof either for the



assessment year 2003-2004 or for the assessment year 2001-2002.

9. Learned counsel for the Assessee relied upon *Commissioner of Income Tax v. Kerala State Co-operative Marketing Federation Ltd., [1992] 193 ITR 624* wherein it has been held by the Kerala High Court that in the event relevant facts are not on record, the Tribunal can always remand the matter to the file of the Assessing Officer to investigate and determine the facts. It is submitted that the Tribunal ought to have remanded the matter to the file of the Assessing Officer rather than decline to permit the Assessee to raise the additional ground.

10. Following the view expressed by the Kerala High Court, with which we have no reason to disagree, particularly since it relies upon a decision of the Madras High Court in *CED v. R. Brahadeeswaran, [1987] 163 ITR 680*, which in turn relies upon three decisions of the Supreme Court in *CIT v. McMilan and Co., [1958] 33 ITR 182; Hukumchand Mills Ltd. v. CIT, [1967] 63 ITR 232* and *CIT v. Mahalakshmi Textile Mills Ltd., [1967] 66 ITR 710*, we answer the question of law in the affirmative, in favour of the Assessee and against the Revenue and remand the matter to the file of the Assessing Officer to determine the claim of the Assessee on merits.



11. The appeal is disposed of.

Madan Lokur
MADAN B. LOKUR, J

APRIL 07, 2008
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V.B. Gupta
V.B. GUPTA, J