



18 & 19
% 16.10.2008

Present: Dr Rakesh Gupta with Ms Poonam Ahuja and Ms Aarti Saini for the Appellant.
Mr R. D. Jolly for the Respondent.

+ ITA 420/2008 & ITA 421/2008

The order impugned in these appeals is the order dated 14.09.2007 passed by the Tribunal in ITA Nos. 4308/Del/2003 and 4656/Del/2004 pertaining to the assessment year 1997-1998.

A reading of paragraph 2.2 of the impugned order indicates that the assessee had also filed an appeal before the Tribunal against the order dated 06.02.2003 passed by the Commissioner of Income Tax (Appeals) in which an additional ground was raised that the assessment was bad in law as the notice under Section 143 (2) had not been served within the statutory period.

The Tribunal had admitted the said ground and restored the issue to the file of the Commissioner Income Tax (Appeals) for adjudicating the said ground. The Commissioner of Income Tax (Appeals), by an order dated 28.12.2004, found the claim of the assessee to be correct and held the assessment order to be a nullity.



It had been contended before the Tribunal that as the assessment order had been held to be a nullity, the appeals before it had become infructuous. However, it was not known to the Tribunal as to whether any further appeal had been preferred against the order dated 28.12.2004 passed by the Commissioner Income Tax (Appeals). It is in this background that the Tribunal decided to go ahead with the hearing of the appeal and decided the issue raised before it on merit.

It has been stated by the learned counsel for the appellant that the appeal against the order dated 28.12.2004 passed by the Commissioner of Income Tax (Appeals) had been heard and disposed of by the Tribunal on 30.08.2007. In view of the retrospective amendment to the provisions of Section 148 with effect from 01.10.1991 by virtue of the Finance Act, 2006, the question with regard to the issuance of notice under Section 143 (2) was no longer relevant. In this background, the learned counsel for the assessee had no objection to the restoration of the issue to the file of the Commissioner of Income Tax (Appeals) for deciding the same afresh on merits.



By virtue of the order dated 30.08.2007 passed by the Tribunal in ITA 1209/Del/2005 pertaining to this very assessment year (i.e. 1997-1998), the order dated 28.12.2004 passed by the Commissioner of Income Tax (Appeals) was set aside and all the issues involved therein were restored to the file of the Commissioner of Income Tax (Appeals) for fresh adjudication after giving proper opportunity to both the sides.

Unfortunately, this order was not available with the Tribunal when the impugned order dated 14.09.2007 had been made. It is in the absence of this order that the Tribunal decided to go ahead with disposing of the appeals before it on merits.

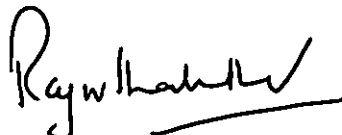
In this background, we feel that the appropriate course of action would be to direct the parties to appear before the Commissioner of Income Tax (Appeals) before whom the entire matter rests for afresh adjudication after proper opportunity is given to both the sides. Since the Tribunal passed the impugned order on the ground that the outcome of any further appeal in the matter was not available to it, we feel that it would be appropriate that the impugned order is set aside inasmuch as the Tribunal in another



appeal had already passed the order dated 30.08.2007 remitting the entire matter for fresh adjudication before the Commissioner of Income Tax (Appeals). Consequently, we set aside the impugned order and direct the parties to seek adjudication afresh before the Commissioner of Income Tax (Appeals) as directed by the Tribunal by its order dated 30.08.2007. We make it clear that we have not expressed any opinion on the merits of the matter. It shall be open to the assessee as well as the revenue to take up all grounds before the Commissioner of Income Tax (Appeals).

These appeals stand disposed of accordingly.


BADAR DURREZ AHMED, J


RAJIV SHAKDHER, J

October 16, 2008
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