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% 11.09.2008

Present: Mr J.R. Goyal for the Petitioner.
Mr M.P. Rastogi with Mr K.N. Ahuja for the
Respondents.

+ ITA Nos. 336/2006, 1116/2006, 354/2007, 356/2007, 357/2007,
358/2007, 404/2007, 420/2007

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These appeals pertain to the same assessee, but arise out of three different orders passed by the Income-tax Appellate Tribunal. The first order pertains to the year 1998-99 and was passed on 30.08.2005 in ITA No.702/Del/2002. This was followed by the order dated 14.02.2006 in respect of the assessment year 2001-02 in ITA No. 4305/Del/2004. The third and the last order passed by the tribunal is dated 15.06.2006 in respect of the assessment years 1992-93 to 1997-98 in ITA Nos. 2376 to 2381/Del/2004. The issue in all these appeals is common.

2. The order passed on 30.08.2005 in respect of the assessment year 1998-99 has been treated as the main order which has been followed by the tribunal in the other orders. In the order dated 30.08.2005, the tribunal has confirmed the view taken by the Commissioner of Income-tax (Appeals) wherein note of the order



dated 17.02.1984 passed by this court in an interlocutory application in a partition suit filed by one of the heirs of Late Mr B.D. Gupta was taken. The CIT (Appeals) held that only 40% of the properties belonged to the HuF and the balance 60% of the properties were to be treated as properties in the hands of the heirs of Late Shri B.D. Gupta in their individual capacities. In the course of arguments before this court, the learned counsel for the respondents submit that the said suit which was pending before this court was subsequently transferred to the district court on account of enhancement of the pecuniary jurisdiction of the district courts. That suit was ultimately withdrawn by the plaintiff in view of a family settlement that had been arrived at between the parties on 05.11.2004. He has placed on record a copy of the application under Order 8 Rule 1A read with Section 151 as well as photocopy of the family settlement dated 05.11.2004 and a photocopy of the application filed by the plaintiff (Smt Sneha Lata Gupta) for withdrawal of the suit. Also placed on record is a photo copy of the order dated 19.05.2006 passed by the learned Additional District Judge whereby the suit was permitted to be withdrawn after recording the statements of the parties.



3. The Assessing Officer as well as the Commissioner of Income-tax (Appeals) and the tribunal have recorded that the orders passed by them would be subject to the final order passed by the High Court in respect of the balance 40% share which was being treated at the hands of the HuF.
4. The subsequent developments of the transfer of the suit to the District Court and the withdrawal thereof in view of the family settlement was not before the tribunal when the impugned order was passed. The learned counsel for the parties agree that in view of these developments, the matter be remanded to the tribunal for considering the entire issue afresh in accordance with law. Consequently, we set aside the impugned order and remand the matter to the Income-tax Appellate Tribunal to consider the appeals afresh after taking into account the further developments that have taken place as indicated above. It would be open to the tribunal to pass any order in accordance with law. In doing so, the tribunal shall take note of the provisions of the Income-tax Act, 1961 and in particular Section 171 thereof. This order is also being passed because when the suit was permitted to be withdrawn by the order



dated 19.05.2006 there was also a specific direction that the order dated 17.02.1984, which had been taken note of by the Commissioner of Income-tax (Appeals) as also the tribunal, had been vacated.

With these directions, these appeals stand disposed of.

Badar Durrez Ahmed
BADAR DURREZ AHMED, J

Rajiv Shakhder
RAJIV SHAKDHER, J

September 11, 2008

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