THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 16.10.2008

+ ITA 1149/2008

THE COMMISSIONER OF INCOME TAX DELHI (CENTRAL)-II ... Appellant

- versus –

V.L.S. FINANCE LIMITED ... Respondent

WITH

+ ITA 1221/2008

THE COMMISSIONER OF INCOME TAX DELHI (CENTRAL)-II ... Appellant

- versus –

V.L.S. FINANCE LIMITED ... Respondent

AND

+ ITA 1148/2008

THE COMMISSIONER OF INCOME TAX DELHI (CENTRAL)-II ... Appellant

- versus –

V.L.S. FINANCE LIMITED ... Respondent

Advocates who appeared in this case:

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE RAJIV SHAKDHER

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

BADAR DURREZ AHMED, J (ORAL)

1. These three appeals arise out of the common order dated 15.02.2008 passed by the Income-tax Appellate Tribunal under Section 254(2) of the Income-tax Act, 1961 (hereinafter referred to as 'the said Act') in respect of miscellaneous application Nos. 611, 612 and 613/Del/2006. The rectification applications had been filed by the assessee in respect of the tribunal's earlier common order dated 31.08.2005 under Section 254(1) of the said Act in ITA Nos.1754, 1755/Del/2001 and ITA No.1948/Del/2001 pertaining to the assessment years 1995-96, 1996-97 and 1997-98 respectively.

2. The assessee being aggrieved by the earlier order dated 31.08.2005 preferred appeals before this court being ITA Nos. 115/2006, 125/2006 and 129/2006 which had been admitted for hearing. However, the present appeals arise out of the said order dated

Section 254(2) of the said Act have been allowed and the order dated 31.08.2005 has been recalled. The rectification applications had been filed by the assessee because the tribunal had not discussed the Supreme Court decision in the case of ***Commissioner of Income-tax, Karnataka, Bangalore v. M/s Shaan Finance Pvt. Ltd***: **231 ITR 308** while passing the said order dated 31.08.2005. The tribunal, in the impugned order, noted that the said decision of the Supreme Court in the case of ***Shaan Finance Pvt Ltd*** *(supra)* had been referred to. However, inadvertently the same remained to be considered by the tribunal while disposing of the appeals by the said order dated 31.08.2005. The issues involved therein related to depreciation on hire-purchase assets. The tribunal had relied on the Delhi High Court judgments in ***Additional Commissioner of Income-tax, Delhi-I v. General Industries Corporation*****: 155 ITR 430 (Del)** and ***Commissioner of Income-tax v. Nagpur Golden Transport Co.*****: 233 ITR 389(Del)** which had been impliedly overruled by the Supreme Court decision in ***Shaan Finance Pvt. Ltd*** *(supra).*

3. By virtue of the impugned order, the tribunal has accepted the fact that it had not considered the decision of the Supreme Court in ***Shaan Finance Pvt. Ltd*** *(supra)* and in doing so, there was an error or mistake apparent from the record. The tribunal also noted that it was

Supreme Court relevant to the point in issue would give rise to a mistake apparent from the record which can be rectified under Section 254(2) of the said Act. Consequently, the tribunal recalled its earlier order dated 31.08.2005 passed in respect of all the three years in question. However, it clarified that it had not expressed any opinion about the applicability of the said Supreme Court decision in ***Shaan Finance Pvt. Ltd*** *(supra)* which would be considered and finally decided only by the regular bench after hearing the arguments of both the sides afresh on merits in accordance with law.

4. It is in these circumstances that the present appeals have been filed by the revenue against the said order passed by the tribunal. We find that the tribunal has correctly appreciated the law with regard to its power to rectify under Section 254 (2) of the said Act. In a recent decision in the case of ***Assistant Commissioner of Income-tax v. Saurashtra Kutch Stock Exchange Limited*****: 305 ITR 277 (SC)**, the Supreme Court held as under :-

> "40. The core issue, therefore, is whether non-consideration of a decision of Jurisdictional Court (in this case a decision of the High Court of Gujarat) or of the Supreme Court can be said to be a "mistake apparent from the record"? In our opinion, both - the Tribunal and the High Court - were right in holding that such a mistake can be said to be a "mistake apparent from the record" which could be rectified under Section 254(2)."

The Supreme Court also observed:-

> "45. Rectification of an order stems from the fundamental principle that justice is above all. It is exercised to remove the error and to disturb the finality."

5. In view of the clear enunciation of law by the aforesaid decision of the Supreme Court, we find that the order passed by the tribunal, which is impugned herein, cannot be faulted and, therefore, we uphold the same. The position of law is well-settled and, therefore, no question of law can be said to arise out of the impugned order.

The appeals are dismissed.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

October 16, 2008
Dutt