



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

Judgment reserved on : 03.10.2008
 % Judgment delivered on : 21.11.2008

ITA No. 1249/2007

**COMMISSIONER OF INCOME TAX DELHI-IV,
 NEW DELHI**

..... Revenue

-versus-

M/S DCM SRIRAM CONSOLIDATED LTD

..... Respondent

Advocates who appeared in this case:

For the Revenue : Ms Prem Lata Bansal
 For the Respondent : Mr M.S.Syali, Sr.Advocate with Mr V.P.Gupta, Mr
 Aseem Mowar and Mr Basant Kumar, Advocates

CORAM :-

**HON'BLE MR JUSTICE BADAR DURREZ AHMED
 HON'BLE MR JUSTICE RAJIV SHAKDHER**

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

RAJIV SHAKDHER, J

1. This is an appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the "Act") against the judgment dated 09.03.2007 passed by the Income Tax Appellate Tribunal (hereinafter referred to as the "Tribunal") in ITA No.3155/Del/2003, pertaining to, the assessment year 2000-01.



2. By an order dated 03.10.2008, we have framed the following substantial question of law :-

“Whether the Income Tax Appellate Tribunal was correct in law in allowing the assessee’s claim of alleged profits derived by the assessee from the business of generation of power while computing the book profits under Section 115 JA of the Income Tax Act, 1961, particularly when the electricity power generated was entirely for captive consumption?”

3. At this stage, it is pertinent to note that in the assessee’s own case, the aforesaid issues arose for consideration, in the assessment year 1997-98 before the Tribunal. The Tribunal by a judgment dated 02.05.2005 passed in ITA No. 1400/Del/2001 dismissed the appeal of the Revenue.

3.1 In the judgment of the Tribunal, impugned in the instant appeal, the Tribunal has relied upon its own judgment dated 02.05.2005 passed in ITA No.1400/Del/2001, in respect of, assessment year 1997-98. In view of the fact that an appeal, bearing ITA No. 1187/2005, was preferred by the Revenue to this Court against the aforesaid judgment of the Tribunal dated 02.05.2005; which has been dismissed by us today, the present appeal will suffer the same fate. In the result, the appeal is dismissed.

RAJIV SHAKDHER, J

BADAR DURREZ AHMED, J

November 21, 2008
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