



#29 to 31

%24.08.2009

Present: Mr. Sanjeev Sabharwal, Advocate for the appellant.  
Mr. M.S.Syali, Sr. Advocate with Ms. Rani Kiyala, Mr. Pritush  
Jain and Mr. Maryam Sharma, Advocate for the respondent.

+ I.T.A.Nos. 410/2009, 457/2009 & 790/2009

\*

Additions were made by the Assessing Officer in respect of the expenditure incurred on tools and dies treating the same as capital expenditure and rejecting the claim of the assessee that it was revenue expenditure. The CIT(A) allowed the appeal of the assessee and deleted the said additions. The Income Tax Appellate Tribunal has affirmed the decision of the CIT(A). While doing so, the ITAT has relied upon its earlier order dated 9.12.2005 in respect of the assessee's appeal itself, i.e I.T.A. No. 1122(Delhi)/2005 regarding the assessment year 2001-2002. However, we find that in the said appeal, the question which was considered by the Income Tax Appellate Tribunal was as to whether the order of the Commissioner passed under Section 263 of the Act, was proper or not. No doubt, in this context, the issue arose regarding the same type of expenditure namely expenditure incurred on tools and dies. But the parameters and the considerations on which the said appeal was decided were totally different namely, the powers of the CIT(A) in the facts and circumstances of this case



to pass an order of revision under Section 263 of the Act. We, therefore, of  
the opinion that that its judgment dated 9.12.2005 passed in I.T.A No.  
1122(Delhi)/2005 could not be the basis of determining the issue at hand  
namely as to whether the expenditure incurred was revenue in nature or it  
was a capital expenditure. On this ground we set aside the order of the  
Tribunal and remit the case back to the Tribunal for decision on merits.

Parties may appear before the Tribunal on 22<sup>nd</sup> September, 2009.

Handwritten signature of A.K. SIKRI, J.

A.K.SIKRI, J

Handwritten signature of VALMIKI J. MEHTA, J.

VALMIKI J. MEHTA, J

August 24, 2009

ib