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% 06.05.2009

Present: Ms Rashmi Chopra with Mr Chandramani Bhardwaj for the petitioner.

**+ ITA Nos 84/2008, 85/2008**

\* The approval of the Committee on Disputes has not been taken. Consequently, we decline to entertain these appeals. The learned counsel for the appellant is granted leave to apply for approval of the Committee on Disputes in case such application has not been made. In case the Committee on Disputes grants approval, the Revenue would be at liberty to file fresh appeals within 15 days of the appellant receiving the order granting approval.

These appeals stand disposed of in these terms.

*Sen*  
**VIKRAMAJIT SEN, J**

*Rajiv Shukla*  
**RAJIV SHAKDHER, J**

**MAY 06, 2009**

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- from 07 9561/12 (for revival of Appeal)  
 6562/12 (for 10 comp)  
 6563/12 (delay of 98 days in suit etc)



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

+ ITA 84/2008

THE COMMISSIONER OF INCOME TAX V..... Appellant  
Through Mr. Sanjeev Sabharwal, Sr. Standing  
Counsel.

versus

RURAL ELECTRIFICATION CORP. LTD..... Respondent  
Through Mr. Mayank Nagi, Advocate.

+ ITA 85/2008

THE COMMISSIONER OF INCOME TAX V..... Appellant  
Through Mr. Sanjeev Sabharwal, Sr. Standing  
Counsel.

versus

RURAL ELECTRIFICATION CORP. LTD..... Respondent  
Through Mr. Mayank Nagi, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

**HON'BLE MR. JUSTICE G.P. MITTAL**

**ORDER**

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**16.01.2014**

**C.M.No.16294/2012 in ITA No.84/2008**

**C.M.No.9561/2012 in ITA No.85/2008**

This is an application for revival of the appeal, which was



dismissed/disposed of by order dated 6<sup>th</sup> May, 2009 for want approval from the Committee on Disputes (COD). The applicant, Commissioner of Income Tax (LTU) has filed the application for revival in view of the order dated 17<sup>th</sup> February, 2011 passed by the Supreme Court in Civil Appeal No.1883/2011, *Electronic Corporation India Ltd. Vs. Union of India and Others*. By this order, it was held that mechanism of COD device has outlived its utility and the scenario has changed and, therefore, directions issued by the Supreme Court in earlier orders, stand recalled.

2. The respondent has contested the application on the ground that in the present case COD had refused permission to the Revenue to pursue or file the present appeals pursuant to meeting held on 16<sup>th</sup> October, 2008, the minutes of which were circulated on 4<sup>th</sup> November, 2008. This is factually correct.

3. In view of the aforesaid factual position, the present applications have to be dismissed in view of the order dated 13<sup>th</sup> February, 2012 passed in ITA 86/2009, *Commissioner of Income Tax Vs. Gas Authority of India Ltd.* Learned counsel for the applicant, however, has submitted that the Revenue has filed Special Leave to Appeal against the said decision, which is pending. Learned counsel for the respondent has drawn our



attention to the office memorandum dated 4<sup>th</sup> February, 20

issued by the Government of India, Cabinet Secretariat. The same is reproduced below:-

“The undersigned is directed to refer to Cabinet Secretariat’s Office Memoranda of even number dated 1.9.2011 and 20.12.2011 on the above subject vide which all Ministries/Departments were intimated inter alia that the Committee on Disputes (CoD) that had been functioning in Cabinet Secretariat for pursuing litigation by PSUs/Govt. Departments, stood wound up in accordance with the Order dated 17.2.2011 of the Hon’ble Supreme Court.

2. Instances have come to notice wherein a few PSUs/Departments have approached Tribunals/Courts to re-open the cases in which permission to litigate was denied by CoD. In a few cases, Public Sector Undertakings/Departments have filed petitions in the High Courts. In an isolated case, a Special Leave Petition (SLP) has also been filed in the Hon’ble Supreme Court by an organisation against the High Court decision seeking clarification of the Order dated 17.2.2011 of the Hon’ble Supreme Court, although the High Court had declined to re-open the case.

3. Since the matter has been agitated before the Hon’ble Supreme Court in one case and decision on the same is pending, following interim directions are issued, with the approval of the competent authority, for strict compliance:

(I) No Ministry/Department of Public Sector Undertaking under them may re-open those cases in which clear decision has been issued



by the CoD prior to 17.2.2011, AND

(II) Ministries/Departments may circulate the instructions to all concerned offices/PSUs under their administrative control indicating that any violation may be viewed seriously and may invite administrative/disciplinary action.

4. This issues with the concurrence of Ministry of Law, Department of Legal Affairs vide Dy No.246 Adv (B) dated 18.2.2013.

Receipt of this O.M. may kindly be acknowledged.”

4. Learned counsel for the respondent states that the present application may be disposed of with the finding and direction that if the Revenue succeeds in the appeal before the Supreme Court, they will be entitled to ask for revival of the appeals. We take the statement made by the learned counsel for the respondent on record and dispose of the present application with the observation and direction that if the decision in the case of Gas Authority of India Ltd. is reversed, the Revenue will be entitled to ask for revival of the present appeal.

5. The position in ITA 85/2008 in which C.M.No.9561/2012 has been filed is identical, but some clarification is required. This appeal pertains to assessment year 2002-03 and the Revenue had also preferred an application before COD for grant of approval. The respondent along with reply have placed on record copy of minutes of



meeting of COD held on 19<sup>th</sup> June, 2008 in which at Sr. No.11 and 1 the two appeals relating to assessment years 2001-02 and 2002-03 were taken up for consideration. We may note that the tribunal had disposed of the two appeals of the respondent-assessee relating to assessment years 2001-02 and 2002-03 by a common order dated 9<sup>th</sup> March, 2007. The appeals filed by the Revenue were numbered as ITA 4740/Del/2004 (Assessment Year 2001-02) and ITA 4741/Del/2004 (Assessment Year 2002-03). The said two appeal numbers were specifically mentioned in the minutes of the meeting dated 19<sup>th</sup> June, 2008.

6. The said items were again taken up for consideration in the meeting held on 16<sup>th</sup> October, 2008 and permission sought by the Revenue was declined. However, in the minutes of the meeting dated 16<sup>th</sup> October, 2008, there is an apparent error as both the items 1 and 2 have been referred to as ITA 4740/Del/2004 relating to assessment year 2001-02. There was no need to take two items separately, when they were same. It is obvious that there is a typographical error in the minutes of the meeting held on 16<sup>th</sup> October, 2008 and the second item relates to assessment year 2002-03 and ITA No.4741/Del/2004.

7. The statement made by the learned counsel for the respondent referred to above is taken on record for this year as well (i.e. Assessment Year 2002-03). C.M.No. 9561/2012 is also disposed of



giving liberty to the Revenue to revive the appeal in case of favourable decision by the Supreme Court in the appeal against the decision in the case of Gas Authority of India Ltd. (supra).

A handwritten signature in black ink, appearing to read 'S. Khanna'.

**SANJIV KHANNA, J.**

A handwritten signature in black ink, appearing to read 'G.P. Mittal'.

**G.P. MITTAL, J.**

**JANUARY 16, 2014**  
**NA**