



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

+ ITA 29/2008

THE COMMISSIONER OF INCOME TAX V Appellant
Through Ms.Rashmi Chopra, Adv.

versus

ROGER ENTERPRISES P.LTD. Respondent
Through Mr.Ajay Vohra with
Ms.Kavita Jha, Adv.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MADAN B. LOKUR

% **ORDER**
26.05.2010

The Income Tax Appellate Tribunal passed a combined order on 11th December, 2006 in respect of three appeals pertaining to the Assessee being I.T.A. Nos. 567-569/Del/2006 relevant for the Assessment Years 1981-82, 1982-83 and 1983-84.

In respect of one of the Assessment Years, the Revenue preferred an appeal under Section 260-A of the Income Tax Act, 1961 which was registered as ITA No.213/2008. On 28th May, 2008 the following order was passed in ITA No.213/2008:-

“Section 271(1B) has been inserted in the Income Tax Act, 1961 by the Finance Act, 2008 with retrospective effect from 1st April,1989. The inserted provision reads as follows: -



“(1B) Where any amount is added or disallowed in computing the total income or loss of an assessee in any order of assessment or reassessment and the said order contains a direction for initiation of penalty proceedings under clause (c) of sub-section (1), such an order of assessment or reassessment shall be deemed to constitute satisfaction of the Assessing Officer for initiation of the penalty proceedings under the said clause (c).”

In view of the amendment, learned counsel for the parties are agreed that the matter needs to be reconsidered by the Tribunal on merits.

Under the circumstances, we set aside the impugned order and remand the matter to the Tribunal for reconsideration on merits.

The parties will appear before the Tribunal on 1st July, 2008 for directions.

The appeal is disposed of.”

Learned counsel for the Revenue submitted before us that the impugned order of the Tribunal dated 11th December, 2006 was set aside in respect of the same Assessee on identical facts though for a different Assessment Year. It was submitted that since the order of the Tribunal is a combined order we should follow the earlier order passed in ITA No.213/2008 and dispose of this appeal in terms of that order.

Learned counsel for the Assessee, however, contended that there is some difference in the legal position inasmuch as in ITA No.213/2008 the



order of the Tribunal was set aside on a concession made by learned counsel for the Assessee but as far as this appeal is concerned he is not prepared to make any such concession.

In our opinion, it is not possible for us to take two different views in respect of the same Assessee and the same appellate order and identical facts though for a different assessment year,. If the Assessee has accepted that the matter needs to be reconsidered by the Tribunal on merits in respect of one Assessment Year there is no reason why the Assessee should be permitted to take a different stand in respect of some other Assessment Year and in respect of which a common order has been passed by the Tribunal. We, therefore, reject the contention of learned counsel for the Assessee that there is some difference between ITA No.213/2008 and this appeal.

We may note that the order passed by this Court in ITA No. 213/2008 has been accepted by the Assessee who has not challenged that order in the Supreme Court. This is an additional reason why we do not think it appropriate to permit the same Assessee to take two different stands in respect of the same order of the Tribunal.

Under the circumstances, we set aside the impugned order dated 11th December, 2006 and remand the matter back to the Tribunal for



consideration on merits in view of the retrospective amendment to Sec
271(1B) of the Income Tax Act, 1961 as inserted by the Finance Act, 2008
with retrospective effect from 1st April, 1989.

The appeal stands disposed of.

A handwritten signature in cursive script, appearing to read 'Dimitri', positioned above the title 'CHIEF JUSTICE'.

CHIEF JUSTICE

A handwritten signature in cursive script, appearing to read 'Madan Lokur', positioned above the name 'MADAN B. LOKUR, J'.

MADAN B. LOKUR, J

MAY 26, 2010

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