



§- 32 & 33

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

+ **ITA 1006/2005**

THE COMMISSIONER OF INCOME TAX Appellant
Through: Ms Rashmi Chopra, Advocate

versus

M/S THIRANI CHEMICALS LTD. Respondent
Through: None

+ **ITA 457/2007**

COMMISSIONER OF INCOME TAX DEL Appellant
Through: Ms Rashmi Chopra, Advocate

versus

THIRANI CHEMICALS LTD Respondent
Through: None

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MS JUSTICE VEENA BIRBAL

ORDER

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14.12.2011

1. ITA No. 1006/2005 is in respect of the assessment year 1994-1995 and ITA No. 457/2007 is in respect of the assessment year 1996-1997. Earlier there was another appeal raising similar issues being ITA No. 417/2004 pertaining to the assessment year 1992-1993. Three questions had been raised in that appeal which also pertained to the same assessee. The three questions were as under:-

“1. Whether the appellant/assessee can rely upon the orders passed by the Tribunal previously after having made a concession before the Tribunal that the case in hand could be decided on merits independent of any such previous decisions?”



2. Whether the Tribunal could have disagreed with the decision rendered earlier by a Co-ordinate Bench of the Tribunal in relation to another assessment year in the light of the concession made by the parties?

3. Whether ITAT was correct in law in holding that the expansion of the production capacity of the petitioners unit would not constitute setting up of an industrial undertaking eligible for the benefits of deduction u/s 80HH and 80I of the Income Tax Act?"

2. There was a difference of opinion with regard to question Nos 1 and 2 and the same was referred to a third Judge for resolution of the difference. In so far as the question No.3 is concerned, it was not answered in view of the difference of opinion arising in respect of question Nos 1 and 2. By an order dated 23.01.2009, Hon'ble Mr Justice Madan B. Lokur (as he then was) resolved the difference by directing that the appropriate course of action would be for question No.3, to be heard and decided by a three-member Bench of the Tribunal.

3. As such, ITA No. 417/2004 pertaining to the assessment year 1992-1993 was disposed of accordingly.

4. We are informed by the learned counsel for the appellant/Revenue that on remand, the three-member Bench of the Tribunal has already considered the case for the assessment year 1992-1993 as also for the assessment year 1997-1998. By virtue of its judgment and order dated 09.04.2010, the said three-member Bench of the Income Tax Appellate Tribunal decided the appeals before it in respect of the assessment Years 1992-1993 and 1997-1998.

5. We are informed by the learned counsel appearing on behalf of the appellant/Revenue that the assessee has preferred appeals against the said decision



of the three-member Bench of the Tribunal and those appeals are ITA No. 1728/2010 and ITA No. 1729/2010 and both stand admitted and are pending before this Court.

6. We are of the view that the same course of action which was followed in ITA No. 417/2004 for the assessment year 1992-1993 ought to be adopted in the present appeals also. Consequently, we set aside the impugned judgment and orders passed by the Tribunal in the present appeals and remand the matter to the Income Tax Appellate Tribunal for deciding the question as to whether the expansion of the production capacity of the petitioner unit would not constitute setting up of an industrial undertaking eligible for the benefits of deduction under Section 80HH and 80I of the Income Tax Act, 1961? The said question would be decided by the Tribunal on the basis of the factual matrix of the year in question and in accordance with law.

7. These appeals stand disposed of accordingly.


BADAR DURREZ AHMED, J


VEENA BIRBAL, J

DECEMBER 14, 2011
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