



THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 30.04.2010

+ **ITA 957/2006**

COMMISSIONER OF INCOME TAX Appellant

- versus -

M/S G.E.CAPITAL SERVICES INDIA Respondent

Advocates who appeared in this case:-

For the Appellant : Ms P. L. Bansal
For the Respondent : Mr M. S. Syali, Sr Advocate with
Mr Pratyush Jain

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V.K. JAIN

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

BADAR DURREZ AHMED, J (ORAL)

CM 758/2010

The counsel for the parties are present. The respondent / assessee has moved this application for change in the name of the assessee on account of a merger of the assessee with G.E. Capital Services India.

The application is allowed.

The amended memo of parties is taken on record.

ITA 957/2006

1. The revenue is in appeal against the order dated 11.11.2005 passed by the Income Tax Appellate Tribunal in ITA No. 1207/Del/2000



2. The revenue has proposed six questions, which, according to them, are substantial questions of law and need to be considered in this appeal. Proposed questions (a) and (b) pertain to the validity of the re-assessment proceedings under Section 147 of the Income Tax Act, 1961. In this regard, the learned counsel for the respondent / assessee submits that this issue may not be gone into in the present appeal for the reason that the issues on merits, which are comprised in the proposed questions (d) and (e), have already been settled by several decisions including decisions of this Court in the case of **CIT v. Prem Nath Monga Bottlers (P) Ltd: 226 ITR 864** and **JCIT v. Anatronics Genral Company (P) Limited: 247 ITR 25 (Del)**. The question which had arisen in those decisions was whether one bottle was to be treated as an individual asset or the entire bulk of bottles was to be treated as one asset for the purposes of computing depreciation. This Court held that each bottle is to be treated as an individual asset and since the price of each bottle was less than Rs 5,000/-, 100% depreciation was allowable. Thus, insofar as the question of whether 100% depreciation was allowable on the leased bottles, the same stands covered by the aforesaid decisions of this Court. We may point out that in ***Prem Nath Monga Bottlers (P) Ltd (supra)***, reference was also made to a decision of the High Court of Andhra Pradesh in the case of **CIT v. Sri Krishna Bottlers Private Limited: 175 ITR 154 (AP)**. Consequently, the proposed questions (d) and (e) which read as under:-

- (d) Whether ITAT was correct in law in allowing depreciation to the assessee @ 100% on leased assets, being each asset



- (e) Whether the depreciation is to be allowed to the assessee @ 100% or @ 25% as the assessee was engaged in the business of leasing and the assets, being each item costing less than Rs 5,000/- were given on lease in a single lot?

need not to be admitted for the consideration of this Court inasmuch as the issue already stands settled and concluded by virtue of the aforesaid decisions. However, the learned counsel for the revenue pointed out that 100% depreciation on the said bottles would be allowable only if the bottles were used for more than 180 days in the year in question. The bottles involved in the present case were used for less than 180 days and, therefore, only 50% depreciation was allowable in the year in question. This submission is not controverted by Mr Syali, who appears on behalf of the respondent/ assessee.

3. Consequently, although we have not formed any substantial question of law for consideration inasmuch as the issues stand settled, in view of the fact that the said bottles were used for less than 180 days, only 50% depreciation would be allowable and to this extent, the Tribunal's order stands modified. The other proposed questions do not arise for consideration in this appeal.

Consequently, the appeal stands disposed of in the aforesaid terms.

BADAR DURREZ AHMED, J

V.K. JAIN, J

APRIL 30, 2010