(2007) 07 DEL CK 0162

In the Delhi High Court

Case No : IT Appeal No. 593 of 2007

Commissioner of Income Tax — APPELLANT

Vs

D.D. Gears Ltd. — RESPONDENT

Date of Decision : 16-07-2007

Acts Referred:
Income Tax Act, 1961 — Section 260A, 36(1)(iii)

Citation : (2007) 07 DEL CK 0162

Hon'ble Judges : Vidya Bhushan Gupta, J;Madan B. Lokur, J

Bench : Division Bench

Advocate : P.L. Bansal, for the Appellant;

Final Decision : Dismissed

Judgement

1. The Revenue has preferred this appeal u/s 260-A of the Income Tax act, 1961 in respect of an order dated 28th August, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench ''D'' in ITA No. 450/Del/2004 relevant for the assessment year 2000-01. We find from a perusal of the order that the Tribunal has merely followed an earlier order passed by it in ITA No. 3647/D/00 dated 16th September, 2004.

2. Learned counsel for the Revenue informs us and it has been stated in the list of dates, that the order passed by the Tribunal on 16th September, 2004 has been accepted by the Revenue and that order pertains to the same Assessee.

3. It is submitted that the present appeal has been filed disregarding the above fact because of an amendment made to Section 36(1)(iii). We find that the said amendment was made by the Finance Act, 2003, which is, of course, much before the date of the earlier order passed by the Tribunal on 16th September, 2004. We also find that the amendment was given effect to from 1st April, 2004. We also find that the amendment was given effect to from 1st April, 2004, which is also before the date of the earlier order of the Tribunal. In spite of this, the Revenue accepted the order passed by the Tribunal on 16th September, 2004 but

nevertheless justifies the filing of this appeal this specious ground.

4. It is submitted that in other case pertaining to some other assessee, a similar issue was admitted by this court on 15th May, 2006 and that is why the present appeal has been filed. Merely because some similar issue arises in some other case is no ground of filing an appeal in respect of this Assessee particularly when the Revenue has already accepted an earlier order passed by the Tribunal in respect of this Assessee.

5. We also find that the tax effect in this case is less than Rs. 4 lakhs and in spite of a Circular issued by the Central Board of Direct Taxes (CBDT) requiring the Revenue not to file an appeal if the tax effect is less than Rs. 4 lakhs, subject to certain conditions, the present appeal has been filed. There is nothing to suggest that the conditions for filing an appeal, as laid down by the CBDT, have been met by the Revenue.

6. On these facts, we are of the view that this petition has been field for reasons which do not appear to be germane. Under the circumstance, no substantial questions of law arises in this appeal and it requires to be dismissed. We do so with costs of Rs. 5,000/- which will be paid by the Income Tax department to the Delhi High Court Legal Services Committee within four weeks from today.

It is made clear that in case this order is not complied with, further costs may be imposed on the Income Tax department.