

(2006) 07 DEL CK 0112

In the Delhi High Court

Case No : Income Tax A. No. 503 of 2006

Commissioner of Income Tax

APPELLANT

Vs

Devayhi Beverages Ltd.

RESPONDENT

Date of Decision : 31-07-2006

Acts Referred:

Citation : (2008) 296 ITR 41

Hon'ble Judges : Vipin Sanghi, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : P.L. Bansal, for the Appellant; Satyen Sethi, for the Respondent

Final Decision : Dismissed

Judgement

1. The Revenue is aggrieved by an order dated June 21, 2005, passed by the Income Tax Appellate Tribunal, Delhi Bench "B", in ITA No. 1667/Delhi/02 relevant for the assessment year 1998-99.
2. The assessed carries on the business of manufacturing and sale of soft drinks. For the relevant assessment year the assessed claimed breakage, leakage and burst, etc., of bottles and debited an amount of Rs. 1,38,54,100 under this head. Out of this amount the assessed voluntarily added back a sum of Rs. 85,52,347 leaving a balance of Rs. 53,01,853 which was claimed as discount, etc., allowed to dealers for breakage, leakage and burst, etc.
3. The Assessing Officer disallowed the entire amount and added it to the income of the assessed.
4. In appeal before the Commissioner of Income Tax (Appeals) the assessed filed a paper book in which all the claim letters, debit notes, etc. raised by the parties were filed. The Commissioner of Income Tax (Appeals) considered the material on record and did not dispute the transactions but came to the conclusion that because in the earlier year the net discount given by the assessed was 0.635 per cent, of the total sales, in the present relevant assessment year also the net

discount should be 0.635 per cent, of the total sales as against 1.25 per cent, worked out by the assessed. The giving of discount, etc., was not in doubt and only the quantum was required to be considered.

5. Feeling aggrieved by the order passed by the Commissioner of Income Tax (Appeals), the assessed preferred an appeal before the Tribunal which was passed the impugned order allowing its appeal.

6. The Tribunal has noted that the discount given by the assessed was not a colourable device and that there was in fact some business expenditure incurred by the assessed. On the question of the quantum, the Tribunal relied upon a decision of this Court in Commissioner of Income Tax Vs. Dalmia Cement (B.) Ltd., . In that case, the Division Bench held in a similar situation that the reasonableness of expenses could be gone into for the purpose of determining whether in fact the amount was spent. But, if there is a nexus between the expenditure and the purpose of the business, the Revenue cannot be allowed to substitute its opinion for that of the assessed, as if the Revenue was itself the businessman.

7. Applying the decision laid down by this court, we are of the view that since the assessed was not given an opportunity when the Assessing Officer added the entire amount of Rs. 53,01,853 as the income of the assessed, it had no option but to place all the relevant material on record before the Commissioner of Income Tax (Appeals), which it did. The Commissioner of Income Tax (Appeals) considered the material on record and did not doubt the nature of the transactions nor the transactions themselves but came to the conclusion that because in the earlier year, the discount given by the assessed amounted to 0.635 per cent, of the sales, this percentage should not be exceeded in the present assessment year as well. The Tribunal has rightly noted that the Commissioner of Income Tax (Appeals) could not assume the role of the assessed and decide what should have been the appropriate expenditure towards discount, etc. As held by this Court in Commissioner of Income Tax Vs. Dalmia Cement (B.) Ltd., this was not permissible. Consequently, we are of the view that the Tribunal was right in setting aside the order passed by the Commissioner of Income Tax (Appeals) and granting full relief to the assessed.

8. We find no error in the order of the Tribunal. No substantial question of law arises for our consideration. The appeal is dismissed.