(2007) 08 DEL CK 0008

In the Delhi High Court

Commissioner of Income Tax APPELLANT

Vs

Havell''s (P) Ltd. RESPONDENT

Date of Decision : 21-08-2007

Acts Referred:

Citation : (2007) 165 TAXMAN 510

Hon'ble Judges : Madan B. Lokur, J;Dr. S. Muralidhar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The revenue is aggrieved by an order dated 7-7-2007 passed by the Income Tax Appellate Tribunal, Delhi Bench "E" in ITA No. 473/Delhi/ 2006 relevant for the assessment year 2001-02.

2. Admit.

3. After hearing learned Counsel for the parties, the following substantial question of law is framed for consideration:

Whether, while deciding the appeal of the assessee, the Income Tax Appellate Tribunal was justified in ignoring the law laid down by the Bombay High Court in The Commissioner of Income Tax, Mumbai City-II Vs. M/s. Veekaylal Investment Co. P. Ltd., and Kinetic Motor Co. Ltd. Vs. Deputy Commissioner of Income Tax, in preference to decisions rendered by the Mumbai Bench of the Tribunal even though both decisions were cited before the Tribunal?

4. We have gone through the operative portion of the impugned order that is para 6. This reads as follows:

6. On considering the submissions of both the parties and carefully going through the decisions (supra) of the Tribunal wherein the decisions (supra) of the Bombay High Court was taken into consideration by the ITAT - Mumbai Benches in their decisions (supra), in our opinion in order to maintain the consistency in the approach of the Bench, the judicial proprietary demand that we should pay

respect and follow the orders of the co-ordinate Benches wherein on identical facts and identical issue has been decided and hence in this view of the matter and respectfully following the decisions (supra) of the Tribunal, the issue involved in the grounds of appeal of the assessed is decided in favor of the assessed and against the revenue and consequent upon the same the order of the Commissioner (Appeals) in this regard is set aside and grounds of appeal taken by the assessed are allowed.

5. The Tribunal has followed decisions rendered by co-ordinate Benches in the Mumbai Tribunal which have apparently considered the decision of the Bombay High Court in The Commissioner of Income Tax, Mumbai City-II Vs. M/s. Veekaylal Investment Co. P. Ltd., . The Tribunal followed the decision rendered by the coordinate Benches of the Tribunal without discussing the aforementioned decision of the Bombay High Court.

6. The view expressed by the Tribunal is that in order to maintain consistency, judicial propriety demands that the Tribunal should follow the orders passed by co-ordinate Benches on identical facts.

7. We are of the opinion that the approach of the Tribunal is erroneous in this case. The Tribunal has not made any attempt whatsoever to consider or distinguish the judgment of the Bombay High Court in Veekaylal Investment Co. (P.) Ltd. ''s case (supra) on which reliance was placed by the revenue. Judicial propriety, to which the Tribunal has adverted, also demands that when there is a judgment of a superior court, in this case the Bombay High Court, that judgment should be considered by the Tribunal and clear reasons should be given why that decision is distinguishable either in its own words or in the words of the co-ordinate Benches. That has not been done and we are left wondering why the law laid down in Veekaylal Investment Co. (P) Ltd.''s case (supra) is inapplicable. Merely mentioning decision without otherwise referring to the facts or the law laid down in that decision does not amount to considering the decision.

8. It is true that the Mumbai Bench of the Tribunal considered the decision in Veekaylal Investment Co. (P.) Ltd. ''s case (supra) and Kinetic Motor Co. Ltd. Vs. Deputy Commissioner of Income Tax, but what were the reasons given by the Mumbai Bench for arriving at the conclusions that it did is not at all clear.

9. Under the circumstances, we are of the view that it would be appropriate if the matter is remanded to the Tribunal for a fresh consideration on merits. If the Tribunal continues to hold the view that the decision of the Bombay High Court is not applicable either on facts or law, it should clearly state the reasons for its conclusion. The Tribunal should also consider the decision of any other superior court cited before it by any of the parties.

10. The substantial question of law is answered in the negative and the impugned order of the Tribunal, is set aside. The appeal is allowed with a direction that the matter stands remanded to the Tribunal for a fresh disposal on merits.

11. The parties will appear before the Tribunal for directions on 11-9-2007.