(2007) 05 DEL CK 0216

In the Delhi High Court

Case No : IT Appeal No. 134 of 2007

Commissioner of Income Tax — APPELLANT

Vs

HCL Infosystems Ltd. — RESPONDENT

Date of Decision : 09-05-2007

Acts Referred:
Income Tax Act, 1961 — Section 260A, 43B

Citation : (2007) 05 DEL CK 0216

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

Bench : Division Bench

Advocate : R.D. Jolly, for the Appellant; Ajay Vohra and Ms. Kavita Jha, for the Respondent

Final Decision : Dismissed

Judgement

1. The assessee had some unsold stocks on which excise duty had actually been paid. The assessee claimed allowance u/s 43B of the income tax Act, 1961 in respect of the excise duty paid. This was disallowed by the Assessing Officer. On appeal, the Commissioner of income tax (Appeals) agreed with the assessee and the revenue then preferred an appeal before the income tax Appellate Tribunal.

2. The income tax Appellate Tribunal by an order dated 16-2-2006 in ITA No. 2055/Delhi/03 relevant for the assessment year 1997-98 relied upon the orders passed in respect of the earlier assessment years that is 1996-97 and 1999-2000 and decided the appeal in favour of the assessee.

3. On 30-3-2007, we requested learned counsel for the revenue to find out whether the orders passed by the Tribunal in these years have been accepted by the revenue or not. We were told that the order in respect of the assessment year 1996-97 was accepted on the ground that the tax for that assessment year adjusted for the subsequent assessment year. Insofar as the order for the assessment year 1999-2000 is concerned, the revenue had preferred an appeal u/s 260A of the Act being ITA No. 929/2006. It was stated by learned counsel for

the assessee that even though the issue that has been raised in the present appeal had arisen from the order of the Tribunal, no substantial question of law was sought to be framed by the revenue in respect thereof in ITA No. 929/2006.

4. We have checked the file of ITA No. 929/2006 with the assistance of learned counsel for the parties and find that insofar as the assessment year 1999-2000 is concerned, the issue raised in the present appeal arose in that year also but the decision of the Tribunal thereon has been accepted by the revenue and has not been challenged in ITA No. 929/2006. Since the revenue has accepted the decision of the Tribunal for the assessment year 1999-2000, there is no reason why the same issue should be raked up in the present appeal, when there is no substantial difference on facts and not cogent reason has been advanced by learned counsel for the revenue for making departure.

5. We are of the view that no substantial question of law arises. The appeal is dismissed.