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(2004) 11 DEL CK 0075

In the Delhi High Court

Case No : IT Appeal No''s. 491 and 662 of 2004 & IT Appeal No''s. 491 and 662 of 2004 16 November 2004

Commissioner of Income Tax — APPELLANT

Vs

Mayur Recreational and Development Ltd. — RESPONDENT

Date of Decision : 16-11-2004

Acts Referred:
Income Tax Act, 1961 — Section 254, 254(2)

Citation : (2005) 196 CTR 97

Hon'ble Judges : B.C. Patel, C.J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Sanjeev Khanna, for the Appellant; P.N. Monga, for the Respondent

Judgement

B.C. Patel, C.J.—In the present appeals, it is pointed out that the Tribunal, Delhi Bench, disposed of ITA No. 2967/Del/1995, for the asst. yr. 1992-93 on 12th Dec., 2002. Subsequently, an application was moved u/s 254(2) of the IT Act, 1961 (hereinafter referred to as "the Act"), by the assessed. An appeal being IT Appeal No. 168 of 2003, was also filed by the assessed in this Court. During the pendency of the appeal, the Tribunal disposed of the assessed''s application by passing an order dt. 16th March, 2004, recalling its earlier order of 12th Dec., 2002. This fact was brought to the notice of this Court, which disposed of the assessed''s appeal (IT Appeal No. 168 of 2003) on 13th April, 2003, as the appeal became infructuous, in view of the recall of order in its entirety. But, as the Revenue was aggrieved by the Tribunal''s order dt. 16th March, 2004, recalling the earlier order dt. 12th Dec., 2002, in its entirety, it preferred the appeal (IT Appeal No. 491 of 2004), inter alia, raising a question of law, whether the Tribunal exceeded its jurisdiction by recalling the entire order on an application u/s 254(2) of the IT Act, 1961 ? This is the only question which is required to be answered by this Court in the appeal (IT Appeal No. 491 of 2004). We may note that after the Tribunal''s recall order dt. 16th March, 2004, the entire appeal was heard afresh by the Tribunal and it ultimately passed an order thereon on 11th June, 2004. The Revenue, being aggrieved by this order has filed the appeal being IT Appeal 662 of 2004. The question of admissibility of this appeal is dependant on the fate of the appeal being IT Appeal No. 491 of 2004.

2. Insofar as IT Appeal No. 491 of 2004 is concerned, we admit the same and, at the request of the counsel for the parties, take up the same for hearing straightaway.

3. We heard learned counsel appearing for the parties. In the case of Commissioner of Income Tax Vs. Vichtra Construction (P.) Ltd., , this Court had examined an identical question in detail. This Court is of the opinion that the power conferred u/s 254 of the Act does not contemplate rehearing which would have the effect of rewriting an order affecting the merits of the case. Else, there would be no distinction between a power to review and a power to rectify a mistake. What is not permissible under the statute cannot be indirectly done by recourse to Section 254(2) of the Act. Statute deliberately confers the power to rectify the order and does not authorise to review the order. The answer is required to be given in favor of the Revenue in affirmative and against the assessed.

4. In view of this, the order dt. 16th March, 2004, whereby the entire order dt. 12th Dec., 2002 has been recalled cannot be sustained. Accordingly, the appeal (IT Appeal 491 of 2004) is allowed and the Tribunal''s order dt. 16th March, 2004, is quashed and set aside.

5. The result of this is that, the order impugned in IT Appeal 662 of 2004 would not survive as the order of the Tribunal is without jurisdiction and consequently, the appeal (IT Appeal 662 of 2004) itself has become infructuous and is disposed of as such.

6. The learned counsel for the assessed submitted that in view of the order made by the Court today, he may be given liberty to revive the appeal being IT Appeal No. 168 of 2003 challenging the order made by the Tribunal on 12th Dec., 2002. It goes without saying that after the answer which we have given with regard to the question raised by the Revenue, the order made by the Tribunal on 12th Dec., 2002 will remain and, Therefore, the appeal (IT Appeal No. 168 of 2003) filed by the assessed is required to be revived. Ordered accordingly.

IT Appeal No. 168 of 2003

List on 6th Dec., 2004.

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