(2002) 09 DEL CK 0207

In the Delhi High Court

Case No : IT Appeal No. 180 of 2002 and CM 78 of 2002

Commissioner of Income Tax — APPELLANT

Vs

Net Work Ltd. — RESPONDENT

Date of Decision : 23-09-2002

Acts Referred:

Finance Act, 1998 — Section 145A
Income Tax Act, 1961 — Section 260A

Citation : (2004) 191 CTR 427 : (2005) 142 TAXMAN 410

Hon'ble Judges : Sharda Aggarwal, J;D.K. Jain, J

Bench : Division Bench

Advocate : R.D. Jolly and S.C. Sharma, for the Appellant; None, for the Respondent

Judgement

1. CM 78/2002

Allowed, subject to just exceptions.

ITA 180/2002

2. This appeal u/s 260A of the Income Tax Act, 1961 (for short the Act), is directed against the order, dt. 29th April, 2001, passed by the Income Tax Appellate Tribunal (for short the Tribunal) in ITA No. 5944/D/1994, pertaining to the asst. yr. 1990-91.

3. From the impugned order we find that while dismissing Revenue''s appeal, the Tribunal has relied on its Special Bench decision in the case of the assessed itself, pertaining to the asst. yr. 1984-85 as also on its earlier orders in respect of asst. yrs. 1986-87, 1987-88 and 1989-90, wherein the Special Bench decision was followed. Except for relying on these decisions, the Tribunal has not given any other reason for deciding the appeal in favor of the assessed.

4. While very fairly admitting that the orders of the Tribunal pertaining to the earlier aforenoted assessment years had not been challenged, Mr. R.D. Jolly,

senior standing counsel for the Revenue, submits that the issue, subject-matter of this appeal has not been examined by the Tribunal in the light of Section 145A of the Act. It is, Therefore, urged that a substantial question of law does arise from the order of the Tribunal.

5. We are unable to agree with the learned counsel. Section 145A was inserted by the Finance (No. 2) Act, 1998, w.e.f. 1st April, 1999, and it is not made applicable with retrospective effect. Therefore, insofar as the years in question are concerned, it has no application. In this view of the matter and having regard to the fact that the orders of the Tribunal in the case of the assessed, pertaining to the earlier assessment years on identical facts, have been accepted by the Revenue, no fault can be found with the impugned order. No special circumstance has been shown to us prompting the Revenue to change its position only in this year and challenge the Tribunal''s order pertaining to the subsequent assessment years when orders for earlier years have attained finality.

The appeal is accordingly, dismissed.

