(2004) 09 DEL CK 0126

In the Delhi High Court

Case No : IT Appeal No. 154 of 2003

Director of IT APPELLANT

Vs

Domez-Sogea-Borie-Sae RESPONDENT

Date of Decision : 21-09-2004

Acts Referred:

Citation : (2005) 142 TAXMAN 309

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

Bench : Full Bench

Advocate : Sapjeev Khanna, for the assessed S.K. Bhattacharya and K.R. Shukla, for the Revenu, for the Appellant;

Judgement

B.C. Patel, C.J.

This appeal was placed before the court for the first time on 9-7-2003, and the court issued notice, returnable on 23-10-2003. On that date, Mr. S.K. Bhattadharya requested the court that as he has put in appearance on behalf of the respondent time may be granted -and the matter was adjourned to 12-1-2004. Thereafter, the matter was adjourned from time to time. Even today, when the matter was called out, a request was made for time. In this matter, the Tribunal recalled the entire order passed by it earlier and the learned counsel for the appellant submitted that the case is covered by the judgment of this court and the following question of law is required to be answered by the court

"Whether, on the facts and in the circumstances of the case, the Tribunal exceeded its jurisdiction by recalling the order of an application u/s 254(2) and in passing the impugned order ?"

2. The decision is reported in the case of Commissioner of Income Tax Vs. Vichtra Construction (P.) Ltd., . The question requires no more discussion as the same is covered by the decision and we have held as under :

"In view of the provisions and judicial pronouncement indicated hereinabove, we are of the view that the power to rectify a mistake u/s 254(2) cannot be used for recalling the entire order. No power of review has been given to the Tribunal under the Income Tax Act. Thus, what it cannot do directly, cannot be allowed to be done indirectly. If the assessed was aggrieved, it was open for him to approach the appropriate forum but the Tribunal could not have reviewed the entire judgment delivered by it earlier in the garb of exercising its power u/s 254(2). Accordingly, the answer is required to be given in favor of the revenue and against the assessed."

3. Hence, in view of above, the answer is required to be given in favor of the revenue and against the assessed. Accordingly, the appeal is allowed.