
(2008) 01 DEL CK 0044
In the Delhi High Court
Case No : ITA 854 of 2007

DLF Universal Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 11-01-2008

Acts Referred:

Citation : (2008) 306 ITR 271 : (2008) 172 TAXMAN 107

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

Bench : Division Bench

Advocate : V.P. Gupta and Basant Kumar, for the Appellant; Prem Lata Bansal, for the Respondent

Judgement

Madan B. Lokur, J.—The assessed is aggrieved by an order dated 30th March, 2007 passed by the Income Tax Appellate Tribunal, Delhi Bench "B" in ITA No. 3622/Del/1995 relevant for the assessment year 1992-93.

2. After hearing learned Counsel for the parties, we admit this appeal and while dispensing with the filing of paper book, we frame the following substantial question of law for consideration:

Whether the Income Tax Appellate Tribunal was justified in differing with the view taken by a co-ordinate Bench of the Tribunal in respect of the same assessed for the assessment year 1985-86.

3. The question that arose on the merits of the case before the Tribunal was whether on revaluation of the stock in trade of the assessed, the Assessing Officer was justified in making an addition of Rs. 6.01 crores.

4. An identical issue had arisen in the case of the assessed, though in respect of a different amount for the assessment year 1985-86. In respect of that assessment year, the Assessing Officer made an addition, but that was set aside by the Commissioner of Income Tax (Appeals) by a detailed order dated 29th October, 1990.

5. Aggrieved by the order passed by the Commissioner of Income Tax (Appeals), the Revenue preferred an appeal which was heard and dismissed by the Tribunal on 31st January, 2001 being Appeal No. 873/Del/1991 relevant for the assessment year 1985-86.

6. The Tribunal did not give its own reasons while disposing of the appeal of the Revenue but relied upon the basis and reasons given by the Commissioner, which it found to be sound and convincing, so as not to warrant any interference with the order passed by the Commissioner.

7. When the same issue arose in the present assessment year 1992-93, the Assessing Officer again took a view which was not favorable to the assessed with the result that the assessed preferred an appeal before the Commissioner, but by an order dated 10th March, 1995 the Commissioner dismissed the appeal of the assessed.

8. Being aggrieved, the assessed preferred an appeal before the Tribunal and one of the points urged by the assessed was that since the issue raised in 1985-86 was identical, the order passed by the Tribunal in respect of that year should be followed by the Tribunal in this year also. The Tribunal considered that contention in paragraphs 30 to 32 of its order and rejected it on three grounds: firstly, that on the earlier occasion the Commissioner had taken into consideration an amendment to Section 45(3) of the Act which came into force from 1st April, 1988 which was, Therefore, not applicable in respect of the assessment year 1985-86; secondly, that some of the decisions cited before the Tribunal in the present matter were not cited on the earlier occasion; thirdly, that the issue raised was "sensitive" and was not deliberated upon by the Tribunal on the earlier occasion. On this basis, the Tribunal declined to follow the order passed in respect of the assessment year 1985-86.

9. It is now well settled that when one Bench of the Tribunal takes a view, then another Bench of the Tribunal cannot pass a contrary order but must, if it disagrees with that view, have the conflict resolved by referring the matter to a larger Bench. This is not only a matter of judicial propriety but also a matter of judicial discipline.

10. In *Union of India v. Shri P.D. Sharma and Ors.* 2004 III AD (DELHI) 131, a Division Bench of this Court observed as follows:

It is now trite law that a Coordinate Bench of the Tribunal cannot take a view contrary to a view expressed by earlier Bench. It is bound by the judgment of the Coordinate Bench rendered earlier. In case it differs from the decision of the earlier Bench, the only course open to it is to refer the matter to a Larger Bench.

11. In *Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others*, , the Supreme Court held as follows:

The judicial decorum and legal propriety demand that where a learned Single

Judge or a Division Bench does not agree with the decision of bench of co-ordinate jurisdiction, the matter shall be referred to a larger bench. It is a subversion of judicial process not to follow this procedure.

12. In arriving at this conclusion, the Supreme Court relied upon two of its earlier decisions, namely, Mahadeolal Kanodia Vs. The Administrator-general of West Bengal, and Shri Bhagwan and Another Vs. Ram Chand and Another, .

13. Under these circumstances, we answer the question in the negative and remit the matter to the Tribunal for a fresh consideration in accordance with law.