(2008) 07 DEL CK 0110

In the Delhi High Court

Case No : Income Tax A. No. 168 of 2003

Mayur Recreational Dev. Services Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 24-07-2008

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

Citation : (2009) 313 ITR 190

Hon'ble Judges : Rajiv Shakdher, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : P.N. Monga and Manu Monga, for the Appellant; P.I. Bansal, for the Respondent

Judgement

1. This appeal, which has been filed by the assessee, is against the Tribunal''s common order dated December 12, 2002, in respect of I.T.A. No. 2967/Del/95 and I.T.A. No. 5036/Del/97, both in respect of the assessment year 1992-93. The appellant had, simultaneous to the filing of the present appeal, also filed an application u/s 254(2) of the Income Tax Act, 1961, before the Tribunal claiming that the material on record had not been considered by the Tribunal while passing the impugned order dated December 12, 2002. The said application was numbered as M. A. No. 143/D/2003.

2. The Tribunal disposed of the said application by accepting the contentions raised by the assessee and by recalling the impugned order dated December 12, 2002. Thereafter, the Tribunal reheard the appeals and passed an order dated June 11, 2004, in favour of the assessee.

3. The Revenue, being aggrieved by both the order dated March 16, 2004, and June 11, 2004, preferred two appeals, being I.T.A. No. 491 of 2004 and 662 of 2004, respectively, against the said orders. The said appeals were heard and disposed of by an order dated November 16, 2004, passed by this Court whereby the order of recall, i.e., the order dated March 16, 2004, and consequently the order dated June 11, 2004, were set aside. This Court took the view that the

Tribunal had exceeded its powers u/s 254(2) and the proceedings before the Tribunal amounted to a virtual review which was not permissible in law. Consequently, the present appeal, which had earlier been disposed of as having become infructuous in view of the order dated March 16, 2004, passed by the Tribunal, was revived by an order dated June 11, 2004.

4. It is in these circumstances that the present appeal is now before us. After hearing the counsel for the parties, we are of the view that the original grievance of the appellant that the order dated December 12, 2002, which had been passed by the Tribunal without considering all the material on record, remains. It is another matter that the Tribunal itself did not have power to recall the order and enter into a review. However, we feel that it is a fit case for remand. Consequently, the order dated December 12, 2002, is set aside and the matter is remanded to the Tribunal to hear the parties and arrive at a decision afresh.

5. This appeal stands disposed of accordingly.