

* **HIGH COURT OF DELHI : NEW DELHI**

+ ITA 854/2007

Date of decision: 11th January, 2008

DLF UNIVERSAL LTD Appellant
Through Mr. V.P. Gupta and
Mr. Basant Kumar, Advocates
versus

COMMISSIONER OF INCOME TAX Respondent
Through Ms. Prem Lata Bansal, Adv.

_Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may
be allowed to see the judgment? yes
2. To be referred to Reporter or not? yes
3. Whether the judgment should be reported
in the Digest? yes

Madan B.Lokur, J.(oral)

The Assessee 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.

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 Assessee for the assessment year 1985-86?

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

An identical issue had arisen in the case of the Assessee, 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.

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.

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.

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

Being aggrieved, the Assessee preferred an appeal before the Tribunal and one of the points urged by the Assessee 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.

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.

In *Union of India v. Shri P.D. Sharma & 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.”

In *Sundarjas Kanyalal Bhatija & Ors. v. Collector, Thane*, (1989) 3 SCC 396, 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.” (emphasis supplied)

In arriving at this conclusion, the Supreme Court relied upon two of its earlier decisions, namely, *Mahadeolal Kanodia v. Administrator General of West Bengal*, AIR 1960 SC 936 and *Lala Shri Bhagwan v. Ram Chand*, AIR 1965 SC 1767.

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.

MADAN B. LOKUR, J

V.B. GUPTA, J

JANUARY 11, 2008
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