

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**ITA 412/2007**

**COMMISSIONER OF INCOME TAX ..... Appellant  
Through Mrs. P.L. Bansal, Advocate**

**versus**

**R.K.SHRIVASTAV (HUF) ..... Respondent  
Through Mr. Satish Khosla, Advocate.**

**CORAM:**

**HON'BLE MR. JUSTICE MADAN B. LOKUR  
HON'BLE DR. JUSTICE S.MURALIDHAR**

**O R D E R  
31.10.2007**

The Revenue is aggrieved by an order dated 4th August, 2006 passed by the

Income Tax Appellate Tribunal ('the Tribunal') in ITA No. 1565/Del/2001 relevant

for the Assessment Year 1996-1997.

The Assessee had declared his income as Rs.1,88,46,970/-, which includes

a capital gain of Rs.1,83,33,275/-. The return was processed by the Assessing

Officer, who accepted the income shown by the Assessee. Subsequently, while

computing the capital gain, the Assessing Officer noticed

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that the Assessee had claimed deduction on account of selling expenses amounting

to Rs.17,62,841/-. This was on the basis of an agreement, which the Assessee

had entered into with M/s Fortune International Ltd. In view of clause 5 of the

said agreement, the Assessing officer disallowed the claim of selling expenses

since the entire expenditure was to be borne by the company.

Consequently, the Assessing Officer issued a notice to the Assessee under

Section 154 of the Act proposing to disallow the selling expenses claimed by the

Assessee and to rectify the assessment order. The Assessee filed a reply to

the notice but the Assessing Officer did not accept the contention urged by the

Assessee and disallowed his claim for deduction and accordingly passed an order

under Section 154 of the Act.

Feeling aggrieved, the Assessee preferred an appeal before the

Commissioner of Income Tax (Appeals) [CIT(A)]. The appeal was allowed on the

ground that dis-allowance was beyond the scope of rectification permissible

under Section 154 of the Act.

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The Revenue then preferred an appeal before the Tribunal and that is how the matter is now before us.

The Tribunal noted the scope of Section 154 of the Act and on that basis, it held that it could be said that the issue raised was a debatable one and that

being the position, the provisions of Section 154 of the Act would not apply.

There was no rectification carried out by the Assessing Officer but in a sense

it was a review of the order passed by him. This was not permissible under

**Section 154 of the Act.**

**We do not find any fault in the order of the Tribunal inasmuch as it correctly interpreted the relevant Section.**

**No substantial question of law arises.**

**Dismissed.**

**MADAN B. LOKUR, J**

**OCTOBER 31, 2007 S. MURALIDHAR, J**

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