

ITEM NO.26 COURT NO.5 SECTION IIIA

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)...../2009
CC 3217/2009

(From the judgement and order dated 17/03/2008 in ITA No.1113/2007
of the HIGH COURT OF DELHI AT NEW DELHI)

C.I.T.,NEW DELHI Petitioner(s)

VERSUS

PRINCE GUTKA LTD. Respondent(s)

(With appln(s) for c/delay in filing SLP)

Date: 23/03/2009 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA

HON'BLE MR. JUSTICE AFTAB ALAM

For Petitioner(s) Mr. Gopal Subramaniam, ASG.

Mr. Harish Chander, Sr.Adv.

Mr. Rahul Kaushik, Adv.

Mr. B.V. Balaram Das,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
ORDER

Delay condoned.

Dismissed.

(N. ANNAPURNA) (MADHU SAXENA)
COURT MASTER COURT MASTER

IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 1113/2007

COMMISSIONER OF INCOME TAX DELHI II Appellant
Through:Mr.R.D.Jolly, Adv.

versus

PRINCE GUTKA LTD. Respondent
Through

CORAM:

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

O R D E R

17.03.2008

The Revenue is aggrieved by an order dated 9th October, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench F in ITA No.982/Del/2002 relevant for the assessment year 1995-96.

It appears that the Central Excise Department conducted a search operation in the business premises of the Assessee on 21st October, 1994. At that time the Excise Department discovered a manufacturing unit and, therefore, it issued a show cause notice to the Assessee.

The case of the Assessee before the Excise Authorities was that the said

unit actually belonged to one Sunil Kumar Khanna.

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On the basis of the show cause notice issued by the Excise Department, the Income Tax Department also issued a show cause notice to the Assessee to show cause as to why an amount of Rs.81,90,503 be not added to the income of the Assessee.

In so far as the proceedings relating to the notice issued by the Excise Department are concerned, the matter ultimately came before the Customs, Excise and Service Tax Appellate Tribunal, which gave a definite finding that the unit actually belonged to Sunil Kumar Khanna and not to the Assessee. There was also a finding of fact that the income of the said unit was of Sunil Kumar Khanna and not of the Assessee Company.

These findings of fact rendered by the Tribunal having jurisdiction over the matter have become conclusive. They are, therefore, binding upon the Income Tax Department as well, particularly since the direct tax proceedings were initiated on the basis of the show cause notice issued by the Central Excise Department.

In this view of the matter, on the facts of the case, both the Tribunal as well as the Commissioner of Income Tax (Appeals)

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decided the issues in favour of the Assessee.

We do not see any reason why a different view should be taken in the matter, since the facts are quite clear and unambiguous. The income was of Sunil Kumar Khanna and not of the Assessee. The Assessee cannot be foisted with any liability for this.

No substantial question of law arises.

Dismissed.

MADAN B. LOKUR, J

V.B. GUPTA, J

MARCH 17, 2008

Bisht

