

IN THE HIGH COURT OF DELHI AT NEW DELHI

05.03.2009

**Present : Mr. R.D. Jolly, Adv. with Ms. Rani Kiyala, Adv. for
the appellant/CIT
Mr. Prashant Kumar, Adv. for the Respondent**

**ITA No. 649/2006 M/S USHA INDIA LTD.
ITA No. 916/2006**

The appellant/department is aggrieved by the impugned order dated 9.6.2005 of the Income Tax Appellate Tribunal partly allowing the assessee's appeal for the assessment year 1991-1992 and 1993-1994.

The controversy related to the additions made by the assessing officer in the total income of the assessee on account of alleged Benami concerns from which the assessee was stated to have earned income. It has been noticed that in the impugned order that for the assessment year 1989-1990 and 1990-1991, the same additions were made. The CIT (Appeals) for the assessment year 1989-1990 set aside such addition and for the assessment year 1990-1991, the addition was deleted. A finding was arrived at that except for one of the companies, the rest of the companies were not Benami of the assessee company and that facts relating to the companies had been jumbled up. The impugned order also records the admitted position that there was no second appeal by the Department for these two assessment years. The Tribunal thus, found that when the finding given for the assessment year 1990-1991 had become final, there was no point in setting aside the issue as in the assessment year 1989-1990 as pleaded by the Department.

Learned counsel for the respondent had pointed out to us the aforesaid fact on 16.12.2008 to contend that the order of the CIT (Appeals) for the earlier assessment year has become final. Learned counsel for the appellant/Department had taken time to obtain instructions. The matter being listed on three occasions, learned counsel for the appellant has no instructions to the contrary.

In view of the aforesaid, there is no infirmity in the impugned order in so far as this common question in the two appeals is concerned.

It is submitted that though the aforesaid is the only question raised in ITA 916/2006 for the assessment year 1991-1992. In ITA 649/2006 for the

assessment year 1993-1994, a further issue has been raised that the ESI and PF deducted was not deposited within time and thus deduction for the same is not available to the assessee company.

Learned counsel for the respondent has referred to the Division Bench Judgment of this Court in CIT vs. Modi Spinning and Weaving Mills Co. Ltd. 292 ITR 479 to contend that if such deposits have been made within the extended period of time, the deductions are admissible. Learned counsel for the appellant/Department cannot dispute that this issue is no more res integra as in the present case also the deposits have been made within the extended period of time. There is no merit in respect of this ground.

The appeals are accordingly dismissed.

SANJAY KISHAN KAUL, J.

MARCH 05, 2009 SUDERSHAN KUMAR MISRA, J.
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