

IN THE HIGH COURT OF DELHI

CM NO. 11880/2008 IN ITR 23/1989

THE COMMISSIONER INCOME TAX

Vs

M/s MMTC OF INDIA

Badar Durrez Ahmed And Rajiv Shakdher JJ.,

Dated: October 23, 2009

Appellant rep by: Ms Rashmi Chopra, Advocate

Respondent rep by: Mr Ajay Vohra, Ms Kavita Jha & Mr Amit Sachdeva,
Advocates

Income tax - Reference application - Revenue argues the assessee being a public sector undertaking should have sought CoD clearance before filing a reference - held, the right to file a reference is conferred by the statute, and the judgment of the Supreme Court in the ONGC case ([2002-TIOL-196-SC-CX](#)) does not seek to take away this right. An approval from CoD for filing the reference is not a pre-requisite. Had it been the case, even the Revenue would have required such a permission from the CoD to file this petition - Revenue's appeal dismissed

JUDGEMENT

Per: Rajiv Shakdher J.:

1. The upshot of the present application is to seek a review of our order dated 14.07.2008, on the sole ground that the applicant/ assessee is a public sector undertaking and hence, no order could have been passed in the reference, preferred by the department, as the prior approval of the 'Committee on Disputes' was not taken, apropos the judgment of the Supreme Court in the case of ***Oil & Natural Gas Commission vs Collector of Central Excise: (2004) 6 SCC 437 = ([2002-TIOL-196-SC-CX](#))***.

2. We are of the view that the application is without merit, for more than one reason: First, the right to file a reference is conferred by the statute, the judgment of the Supreme Court does not seek to take away this right. A careful analysis of ***Oil & Natural Gas Commission (supra)*** and those which preceded and followed it, would show that they injunct the prosecution of an action where two entities of the State are involved. If a reference is filed without an approval it cannot be held, as not being maintainable. In somewhat similar circumstances where an issue arose with respect to interpretation of Section 171 of the Indian Companies Act, 1913 as regards as to what would be the position in respect of a suit or proceeding which is instituted by an official liquidator without the leave of the court, as mandated by the said provision. The Supreme Court held that a suit or a proceeding instituted without the leave of the court may be ineffective until leave is obtained, but once leave is obtained the proceedings "will be deemed instituted on the date granting leave". [See: ***Bansidhar Shankarlal vs Mohd. Ibrahim: (1971) 41 Com Cases 21 (SC)***]. Second, in view of the fact that it is not disputed that the judgment of a Division Bench of this Court in ***CIT vs National Agricultural Co-operative Marketing Federation of India Ltd: (1999) 236 ITR 766*** covered the issue raised in the reference, the Committee on Disputes could have either prevailed upon the assessee to comply, or in the alternative, give permission to the department to file a reference. There was no third alternative available with the Committee on

Disputes. Third, we are of the view that the reference to the Committee on Disputes is mandated only if a dispute exists. In the absence of such a circumstance, there was no occasion to approach the Committee on Disputes for approval; as the issue raised was not *res integra*. Lastly, the entire purpose of routing matters through the Committee on Disputes is that, the State and/or its instrumentalities do not fritter away valuable funds, and clog the courts with disputes which perhaps can be resolved inter-departmentally. In the instant situation, where the court has already provided the answer, to the issues raised in the reference; an approval for filing the reference was not a pre-requisite - since all that the reference sought to achieve was to bring the impugned judgment in line with an earlier decision of this court. If we are to take a strict view of the matter, the institution of the instant review application ought to have had the approval of the Committee on Disputes. Which, it does not have.

3. In view of the discussion above, the application is dismissed.

4. This, however, will not come in the way of the review petitioner in approaching the Committee on Disputes for assuaging the burden of recovery of dues, if any, pursuant to our judgment.