

**Court No. - 37**

**Case :-** INCOME TAX APPEAL No. - 545 of 2007

**Petitioner :-** The Commissioner Of Income Tax And Another

**Respondent :-** M/S Rama Paper Mills Ltd.

**Petitioner Counsel :-** A.N.Mahajan/S.S.C.

**Hon'ble Yatindra Singh,J.**

**Hon'ble Prakash Krishna,J.**

1. The assessee filed his return for the assessment year 2000-01 claiming Rs.17,60028.00 as deferred revenue expenditure under section 35-D(1) of the Income Tax Act (the Act). However, at the time of passing of the order the assessee claimed the entire amount to be revenue expenditure liable to be allowed in the same year. This was negated by the assessing officer by his order dated 28.3.2003.
2. The assessee filed an appeal. The Commissioner (Appeals) by his order dated 16.7.2003 accepted the this contention of the assessee.
3. The Income Tax Department (the Department) filed an appeal before the Income Tax Appellate Tribunal, Delhi Bench 'B', New Delhi (the Tribunal) which was dismissed on 30.8.2006, hence the present appeal.
4. We have heard Sri AN Mahajan, counsel for appellant and Sri Anil Sharma for the assessee.
5. The Commissioner (Appeals) in his order has held that the payment was made during the year and as such there was no justification to take recourse of section 35-D(1) of the Act. This was also upheld by the Tribunal. This is a finding of fact. There is no illegality in the same.
6. The counsel for the Department submitted that:
  - As the assessee had itself claimed it as deferred revenue expenditure, the benefit could be given only under section 35-D(1) of the Act; and
  - The Tribunal and Commissioner (Appeals) committed illegality in not holding the same.
7. The fact that assessee by mistake had claimed the benefit under a wrong section, does not mean that he should not be given correct relief as admissible under the law.
8. In view of above, there is no merit in the appeal and it is dismissed.

**Order Date :-** 16.11.2010

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