

IN THE HIGH COURT OF DELHI AT NEW DELHI

01.04.2009

Present: Ms Sonia Mathur and Mr Praveen Chaturvedi, Advocates for the Appellant.

ITA No. 376/2009 NAPCON TURBOCHARGERS LTD.

The CIT(A) as well as the ITAT have returned a finding of fact to the effect that the business of the assessee had been continued for the relevant

assessment year. The CIT(A) has taken note of the fact that even if orders had

not been received, there was ample reason to conclude that the business operations were continuing in the relevant year.

Ms Sonia Mathur has urged before us that the ITAT has sustained the findings of the CIT(A) by only relying on its own order for an earlier assessment year i.e., 2002-03. This submission seems attractive at first blush

but when put to close scrutiny, its untenability is quite apparent. The position

becomes clear upon reading the order passed by the Assessing Officer. The

Assessing Officer as a matter of fact had come to the conclusion that in the

assessment year under consideration i.e., assessment year 2003-04 no business

was carried out by the assessee by referring to the facts obtaining in the preceding and succeeding assessment years. It is in

this context that the Tribunal in the impugned judgment has referred to its own order for assessment year 2002-2003.

A reading of the orders of the authorities below would show that their decision is not based entirely on the reasoning given in the earlier assessment year.

The following paragraph from the order of the CIT(A), which has been upheld by the ITAT is relevant.

'I have considered the facts of the case and also gone through the appellate

order for immediately preceding year. In fact, I have given a finding in assessment year 2002-03 that the business of turbo chargers is in existence and

merely because orders were not received, there could be no adverse inference.

As in the case of preceding year, there is no sale of any plant and machinery or

closure of the establishment and on the contrary from the various expenses

incurred by the appellant, continuation of business is fully supported. In fact, Assessing Officer himself in the assessment order has made reference to

claim of expenses under the head cost of manufacturing and sales, staff expenses, sale and administrative expenses and as such the finding of the

Assessing officer that the business has been closed is self contradictory.

Further, even warranty obligation in respect of execution of earlier orders was

also operative during the year. In order to supplement in the existing business, the appellant along with the turbo charger business also initiated the

business activities for manufacturing of coins and coins blanks as a 100% EOU

and all the requisite approvals were obtained and the products were

being

tested. In fact, the business of coins blanks is also integrated and complimentary to the business of the turbo charges as the exciting plant and

machinery continued to be used. There is interlacing of funds, management and infrastructure.'

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It is quite clear that none of the facts found by the CIT(A) could be traversed by the Revenue before the Tribunal. In view of the above, no substantial question of law arises for consideration of this Court. Accordingly, the appeal is dismissed.

VIKRAMAJIT SEN, J.

RAJIV SHAKDHER, J.

APRIL 01, 2009

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