

(2008) 11 DEL CK 0236
Delhi High Court
Case No: ITA No. 571 of 2006

Commissioner of Income Tax

APPELLANT

Vs

DCM Sriram Consolidated Ltd.

RESPONDENT

Date of Decision: Nov. 21, 2008**Acts Referred:**

- Income Tax Act, 1961 - Section 115JA, 260A

Hon'ble Judges: Rajiv Shakdher, J; Badar Durrez Ahmed, J**Bench:** Division Bench**Advocate:** Prem Lata Bansal, for the Appellant; M.S. Syali V.P. Gupta, Aseem Mowar and Basant Kumar, for the Respondent**Final Decision:** Dismissed

Judgement

Rajiv Shakdher, J.

This is an appeal u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as the "Act") against the judgment dated 12.8.2005 passed by the Income Tax Appellate Tribunal (hereinafter referred to as the "Tribunal") in ITA No. 2316/Del/2001, pertaining to, the assessment year 1998-99.

2. By an order dated 03.10.2008, we have framed the following substantial question of law:

Whether the Income Tax Appellate Tribunal was correct in law in allowing the assessee's claim of alleged profits derived by the assessee from the business of generation of power while computing the book profits u/s 115JA of the Income Tax Act, 1961, particularly when the electricity power generated was entirely for captive consumption.

3. At this stage, it is pertinent to note that in the assessee's own case, the aforesaid issues arose for consideration, in assessment year 1997-98 before the Tribunal. The Tribunal by a judgment dated 02.05.2005 passed in ITA No. 1400/Del/2001

dismissed the appeal of the Revenue.

3.1 In the judgment of the Tribunal, impugned in the instant appeal, the Tribunal has relied upon its own judgment dated 02.05.2005 passed in ITA No. 1400/Del/2001, in respect of, assessment year 1997-98. In view of the fact that an appeal, bearing ITA No. 1187/2005, was preferred by the Revenue to this Court against the aforesaid judgment of the Tribunal dated 02.05.2005; which has been dismissed by us today, the present appeal will suffer the same fate. In the result, the appeal is dismissed.