Delhi High Court Cit vs A. R. J. Security Printers on 31 March, 2003 Equivalent citations: 2003 131 TAXMAN 297 Delhi Author: D Jain JUDGMENT D.K. Jain, J. These three appeals, by the revenue, under section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') are directed against the orders passed by the Income Tax Appellate Tribunal, New Delhi (hereinafter referred to as 'the Tribunal') in ITA Nos. 2062/Del/96, 3676 & 3122/Del/97 and 3157/Del/99 pertaining to assessment years 1991-92, 1993-94, 1994-95 and 1996-97 respectively. 2. Since a common issue is involved in all the three appeals, these are being disposed of by this order. 2. Since a common issue is involved in all the three appeals, these are being disposed of by this order. 3. The issue involved in the appeals is as to whether the assessed, engaged in the business of printing of lottery tickets, can be said to be an industrial undertaking engaged in the manufacture or production of articles or things and, therefore, entitled to deduction under section 80-I of the Act. 3. The issue involved in the appeals is as to whether the assessed, engaged in the business of printing of lottery tickets, can be said to be an industrial undertaking engaged in the manufacture or production of articles or things and, therefore, entitled to deduction under section 80-I of the Act. 4. Incidentally, in none of the assessment orders or in the order of the Tribunal we find any discussion on the issue. The assessing officers merely note that the claim preferred by the assessed under section 80-I cannot be allowed because similar relief has been denied to them in respect of assessment years 1991-92 and 1992-93. Similarly, both the appellate authorities, while holding that the assessed was entitled to deduction under the said section, have relied on their earlier orders, particularly in respect of assessment year 1992-93. 4. Incidentally, in none of the assessment orders or in the order of the Tribunal we find any discussion on the issue. The assessing officers merely note that the claim preferred by the assessed under section 80-I cannot be allowed because similar relief has been denied to them in respect of assessment years 1991-92 and 1992-93. Similarly, both the appellate authorities, while holding that the assessed was entitled to deduction under the said section, have relied on their earlier orders, particularly in respect of assessment year 1992-93. 5. We have heard Mr. Sanjiv Khanna, learned senior standing counsel for the revenue and Mr. B. Gupta, learned counsel, for the respondent. 5. We have heard Mr. Sanjiv Khanna, learned senior standing counsel for the revenue and Mr. B. Gupta, learned counsel, for the respondent. Upon questioning by the court, Mr. Khanna has candidly admitted that Tribunal's order for the assessment year 1992-93 has not been challenged by the revenue. He would, however, submit that since the issue involved is legal and the principle of res judicata does not apply to proceedings under the Act, these appeals may be entertained. On the other hand, Mr. Gupta, learned counsel for the respondent-assessed, points out that even in respect of assessment years 1995-96 and 1997-98 the revenue has not challenged the orders passed by the Tribunal, holding that the assessed was entitled to tax concession under section 80-I of the Act. It is urged that since in respect of three assessment years it has been accepted by the revenue that the assessed is entitled to deduction under section 80-I of the Act, in the absence of any change in the nature of assessed's business, the revenue cannot

be permitted to adopt a different stand in respect of the assessment years in question. 6. We find substance in the contention urged by learned counsel for the assessed. True that each assessment year being independent of the other, as a general rule, the principle of res judicata or estoppel by record, which applies to civil courts, does not apply to income tax proceedings but, yet for the sake of consistency and for the purpose of finality in all litigations, including litigation arising out of fiscal statutes, earlier decisions on the same question should not be reopened unless some fresh facts are found in the subsequent year. The Supreme Court in Radhasoami Satsang v. CIT (1992) 193 ITR 321 (SC) observed that where a fundamental aspect permeating through different assessment years has been found as a fact one way or the other and the parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year. 6. We find substance in the contention urged by learned counsel for the assessed. True that each assessment year being independent of the other, as a general rule, the principle of res judicata or estoppel by record, which applies to civil courts, does not apply to income tax proceedings but, yet for the sake of consistency and for the purpose of finality in all litigations, including litigation arising out of fiscal statutes, earlier decisions on the same question should not be reopened unless some fresh facts are found in the subsequent year. The Supreme Court in Radhasoami Satsang v. CIT (1992) 193 ITR 321 (SC) observed that where a fundamental aspect permeating through different assessment years has been found as a fact one way or the other and the parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year. In our view, the aforenoted observations by the Apex Court are squarely applicable on the facts in hand. In the present cases, the same issue, namely, whether the assessed is entitled to relief under section 80-I of the Act or not, was decided by the Tribunal in favor of the assessed in respect of assessment year 1992-93, which order has now been followed by the Tribunal while deposing of appeals for the three years in question. As noted above, the assessing officer disallowed assessed's claim only on the ground that similar claim had been disallowed in earlier years. No fresh material has been brought on record by the lower authorities, warranting fresh consideration. Admittedly, order of the Tribunal for assessment year 1992-93 has not been challenged by the revenue. Similarly, orders of the Tribunal on the issue, pertaining to assessment years 1995-96 and 1997-98, have attained finality. 7. In the aforenoted factual background, we fail to appreciate as to how, when there is no change in the business of the assessed, relief under section 80-I of the Act can be denied to them in respect of some of the assessment years when similar relief is granted for previous and subsequent years. We are of the view that having accepted at least in three assessment years that the assessed's business activity fell within the ambit of section 80-I of the Act, the revenue cannot be allowed to now turn around and content that deduction under the said section is not available to them in respect of the present assessment years. 7. In the aforenoted factual background, we fail to appreciate as to how, when there is no change in the business of the assessed, relief under section 80-I of the Act

can be denied to them in respect of some of the assessment years when similar relief is granted for previous and subsequent years. We are of the view that having accepted at least in three assessment years that the assessed's business activity fell within the ambit of section 80-I of the Act, the revenue cannot be allowed to now turn around and content that deduction under the said section is not available to them in respect of the present assessment years. 8. In Union of India v. Satish Panalal Shah (2001) 249 ITR 221 (SC) the Apex Court has also deprecated the practice of the department in accepting the correctness of a judgment on a particular issue in one case and challenging its correctness in another case. 8. In Union of India v. Satish Panalal Shah (2001) 249 ITR 221 (SC) the Apex Court has also deprecated the practice of the department in accepting the correctness of a judgment on a particular issue in one case and challenging its correctness in another case. For the foregoing reasons, without going into the merits of the issue raised, we decline to entertain the appeals on this short ground. Dismissed.