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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 537/2006

COMMISSIONER OF INCOME TAX Appellant
Through Ms.P.L. Bansal with Mr.Vishnu Sharma

versus

M/S GALAXY POWER CABLES LTD. Respondent
Through Mr.Manu K. Giri with Mr.K. Sampat

CORAM:

HON'BLE MR. JUSTICE T.S.THAKUR

HON'BLE MR. JUSTICE SHIV NARAYAN DHINGRA

ORDER

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19.04.2006

For the assessment year 1996-97 the assessee filed a return showing a total loss of Rs.1 crore 83 lakhs and odd. It claimed to have received a sum of Rs.75 lakhs from M/s Himachal Futuristic Communication Ltd. (HFCL) in connection with the setting up a cable unit for benefit of the latter. Against the said amount, the assessee debited a sum of Rs.65 lakhs on account of consultancy/ service charges which were according to it paid by the assessee to M/s IST Ltd. who had actually undertaken the work allotted by HFCL. The Assessing Officer enquired into the question whether the said payment of Rs.65 lakhs was supported by any work undertaken by IST Ltd. and came to the conclusion that there was neither any formal agreement between the assessee and IST Ltd. in relation to the work nor any other reliable material to show that any such work



was undertaken by the IST Ltd. He, accordingly, disallowed the expenses of Rs.65 lakhs claimed by the assessee and added the same back to its taxable income.

Aggrieved by the above order the assessee appealed to the Commissioner of Income Tax Appeals and argued that the Assessing Officer had not approached the issue from a correct prospective. Reliance was placed before the Commissioner upon the correspondence exchanged between the petitioner company on the one hand and IST Ltd. on the other hand to show that not only was IST Ltd. equipped with highly skilled and semi skilled staff and engineers but the work assigned to IST Ltd. had actually being executed by it. It was also demonstrated before the Commissioner that tax had been deducted at source at the time of payment of Rs.65 lakhs to IST Ltd. which payment was made through banking channels. The Commissioner was on the basis of the said material persuaded to hold that IST Ltd. had indeed performed the contract work and the expenses claimed by the assessee were lawfully allowable. The addition made to the Assessing Officer was on that basis deleted.

Aggrieved of the said deletion the Revenue appealed to the Income Tax Appellate Tribunal who on a reappraisal of the material on record affirmed the finding recorded by the Commissioner and held that the expenses claimed by the assessee could not be disallowed just because there was no formal agreement between the assessee on the one hand and the HFCL on the other or between HFCL and IST Ltd. The Tribunal was of the view that the material on record sufficiently established that IST Ltd. had the requisite manpower and the capacity to execute the work in question and that payments made to it had resulted in a tax deduction at source of a sum of Rs. 2,87,500/- paid to the



Central Government. The Tribunal observed :-

“We also observe that the AO has included the sum of Rs.75 lacs claimed by the assessee to have been received from HFCL as income but has not allowed the expenses of Rs.65 lacs claimed by the assessee in the execution of the contract. The learned AR of the assessee submitted that the assessee is a limited company and following the mercantile system of accounting and the expenses accrued during the year were provided during the year by debiting the same in the assessment year 1996-97. He submitted that from the payments made TDS of Rs.2,87,500/- was deducted on 30.03.96 and the same was paid to the credit of the Central Government on 9.4.96. He also submitted that the payments were made through banking channels. In these facts of the case we are of the considered opinion that the assessee received Rs.75 lacs from the said HFCL, which is not in dispute. The said payment has been received by the assessee on the completion of the work. Therefore, it cannot be said that the work was not executed. The assessee claimed that the work was executed by M/s IST Ltd. the associated concern of the assessee, as the assessee did not have the manpower and capacity to execute the work. It is the submission of the assessee that by executing the said contract the assessee has earned Rs.10 lacs as income. Had the assessee not undertaken this contract then it would not have earned the said income of Rs.10 lacs from the transaction. It is also his submission that M/s HFCL wanted the assessee to carry out this job for them. If the assessee would have refused the work or had asked HFCL to approach IST Ltd. then the chances were that the work might have been allowed to any of his competitors. In these circumstances, we are of the considered opinion that the payment has been received by the assessee amount to Rs.75 lacs which have been shown as income. The assessee has shown Rs.65 lacs payable to IST Ltd. as it was following mercantile system of accounting. The payment was made in the subsequent year and the TDS was deducted at the time of payment. Hence, the expenses were incurred by the assessee for its business purposes and allowable as deduction. Hence, we uphold the order of CIT (A) and reject the ground of appeal of the revenue.



Having heard Ms.Bansal counsel for the Revenue, we are of the view that the concurrent findings of fact recorded by the Commissioner of Income Tax and the Tribunal concluded the matter. The facts as found, by the two authorities leave no room for this Court to examine the question whether the expenses claimed by the assessee had in fact been incurred. If the said finding is accepted as we are bound to do, we see no substantial question of law arising from the same for our determination. This appeal, accordingly, fails and is hereby dismissed.


T.S. THAKUR, J


SHIV NARAYAN DHINGRA, J

APRIL 19, 2006

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