* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: June 02, 2006

\+ **ITA No. 781/2006**

\# M/S SONY INDIA PVT. LTD. ..... Appellant
! Through : Mr.C.S. Aggarwal, Sr. Adv. with
Mr. Prakash Kumar, Adv.

versus

$ THE COMMISSIONER OF INCOME-TAX ..... Respondent
^ Through : Mr. Sanjeev Sabharwal, Adv.

CORAM:
HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

: **T.S. THAKUR, J**

This appeal under Section 260A of the Income Tax Act, 1961 assails the correctness of an order passed by the Income Tax Appellate Tribunal, New Delhi in so far as the Tribunal has disallowed a deduction towards contribution of a sum of Rs.4,31,342/- made by the assessee to the gratuity fund and a sum of Rs.35,31,223/- contributed towards the superannuation fund

on the ground that the said funds were not approved during the relevant period.

2. For the assessment year 1998-99, the appellant filed a revised return declaring an income of Rs.1,15,76,566/-. The assessee's case before the Assessing Officer was that it had entered into an agreement with the Life Insurance Corporation of India and made contributions towards gratuity and superannuation funds for the benefit of its employees. An application made by the appellant to the Commissioner of Income Tax for approval of the fund under Employees Group Gratuity Scheme (Corporate and Factory) had resulted in an approval for the said fund w.e.f. 30th September, 1998. A similar approval for superannuation scheme was also granted w.e.f. 14th October, 1998. The appellant's further case was that the contributions made by it were admissible deductions for the period ending 31st March, 1998 which claim was rejected by the Assessing Officer on the ground that contributions to an unapproved fund did not qualify for deduction under Sections 36(1)(iv) and 36(1)(v) of the Act. Aggrieved by the said order, the assessee appealed to the Commissioner of Income Tax (Appeals) who affirmed the view taken by the Assessing Officer. The Commissioner was of the view that the contributions could not be allowed as deductions even

under Section 37 of the Act. Relying upon *Malwa Vanaspati and Chemicals Co. Ltd. Versus CIT* **(1985) 154 ITR 655 (MP)**, *CIT Versus Travancore Titanium Products Ltd.* **1993-203 ITR 174** and *Noshirwan & Co. Pvt. Ltd. Versus CIT* **(1970) 77 ITR 822 (MP)**, the Commissioner held that since gratuity and superannuation funds were specifically covered under Section 36 of the Act, the same could not be considered as admissible deductions under Section 37 which was a residuary provision applicable only in cases which do not fall under any one of the provisions of Sections 30 to 36. A further appeal before the Income Tax Appellate Tribunal against the order passed by the Commissioner having failed, the assessee has filed the present appeal, as already noticed earlier.

3. Appearing for the appellant, Mr. Aggarwal argued that the Tribunal was in error in sustaining the disallowance of the contributions made on the basis of the provisions of Section 40A(7) of the Income Tax Act,1961. He urged that the Tribunal had failed to appreciate that the contribution made by the appellant was not a mere provision within the meaning of Section 40A(7). It was, according to Mr. Aggarwal, a case that fell under Section 36(4) and (5) of the Act as the appellant had paid the amounts and not simply made a provision for payments. The fact that the payments were made after the expiry of the financial year

in question or before the recognition of the funds did not make any difference in so far as the admissibility of deductions claimed by the appellant were concerned. Alternatively, he contended that even if Section 36 (4) and (5) had no application as held by the Tribunal, the deduction was admissible under Section 37 of the Act which was a general provision regulating expenditure laid out or expanded by the assessee for purposes of the business.

4. There is, in our opinion, no merit in either one of the submissions made by Mr.Agarwal. Section 36 of the Act provides for deductions that are admissible while computing the income referred to in Section 28 of the Act. One of the deductions which is made admissible under Clause (iv) of Section 36 is '*any sum paid by the assessee by way of contribution towards a recognized provident fund or an approved superannuation fund*'. Clause (v) of Section 36 similarly provides for deduction of '*any sum paid by the assessee by way of contribution towards an approved gratuity fund provided the same is under an irrevocable trust*'. A plain reading of Section 36(iv) and (v) makes it manifest that deductions thereunder are admissible only if the employer pays the contributions towards a recognized provident fund, an approved superannuation fund or an approved gratuity fund. It is common ground that the funds to which the appellant had contributed in

the present case were not approved either during the year under consideration or at any time up to the date of making the contributions. Such being the position, the contributions made did not qualify for a deduction under Section 36 of the Act.

5. Reliance upon the provisions of Section 43B of the Act by Mr. Aggarwal is also of no assistance to the appellant. That provision inter alia deals with deductions otherwise allowable under the Act and stipulates that payments referred to in the provision shall be allowed as deductions in computing the income referred to in Section 28 of the previous year in which such sum is actually paid irrespective of the previous year in which the liability to pay such sum was incurred by the assessee. What is significant is that before the provisions of Section 43B could be held applicable, a deduction must otherwise be allowable under the Act. This implies that a deduction, if the same relates to contributions made towards a provident fund or superannuation fund or gratuity fund, must have been made only to approved funds. Section 43B does not dispense with the requirements of funds to which contributions are made being approved funds nor does it alter the basis on which the contributions are admissible as deductions under the Act. There is, in that view of the matter, no merit in the contention urged by Mr.Aggarwal that contributions

made by the appellant to funds at any time before the approval of the same were admissible deductions and should have been allowed. The approval of the funds in the present case was admittedly much after the making of the payments.

6. That brings us to the alternative submission urged by Mr. Aggarwal that a deduction could, in any case, be granted under Section 37 of the Act no matter it was not admissible under Section 36 thereof. Section 37 is a residuary provision dealing with deductions that are available while computing income chargeable to tax under the head 'Profit and Gains of Business or Profession'. A plain reading of the said provision would show that any expenditure which is wholly and exclusively laid out or expended by the assessee for purposes of his business or profession is allowable as a deduction provided such expenditure is not of the nature described in Sections 30 to 36 of the Act. The deduction which the appellant claims in the instant case was admittedly one of the nature described in Section 36 (iv) and (v) of the Act. That being so, Section 37 would not come to the aid of the assessee. Any other view in the matter would, in our opinion, render negatory the conditions and limitations subject to which the provisions of Sections 30 to 36 make the deductions envisaged therein admissible. It is well settled that provisions of a taxing

statute have to be interpreted strictly applying the rule of literal interpretation. Nothing can be added or substituted by implication or intendment. If the Parliament has made deductions towards provident fund, superannuation fund or gratuity fund admissible only in cases where such funds are approved, granting deductions of amounts paid into unapproved funds under the cover of Section 37 of the Act may defeat the legislative intent and frustrate the very purpose underlying the specific provisions made thereunder. We, therefore, see no merit even in the alternative contention urged by Mr.Aggarwal that what does not fall under Section 36 may nevertheless fall under Section 37 and be granted by way of a deduction.

7. There is no merit in this appeal which fails and is hereby dismissed.

T.S. THAKUR, J.

SHIV NARAYAN DHINGRA, J.

June 02 , 2006
pk