



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

+ **ITA 81/2006**

COMMISSIONER OF INCOME TAX DEL Appellant
Through Mr. J.R.Goel, Advocate

versus

N.K.RAJGARHIA Respondent
Through Mr.C.S.Aggarwal, Sr.Advocate with
Mr.Prakash Kumar, Advocate

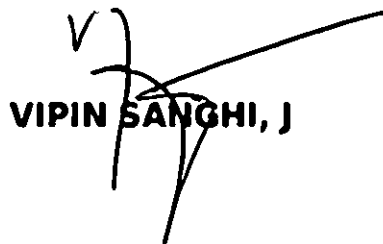
CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
17.08.2006

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For orders see ITA No. 183/2006.


MADAN B. LOKUR, J


VIPIN SANGHI, J

AUGUST 17, 2006
mw



C.D.-I (a) Continuation Sheet

Sr. No.	Date	Orders
		<p>1. Travel undertaken by the assessee himself.</p> <p>2. Travel by the employees of the assessee.</p> <p>3. Travel by Russian Engineers and Technicians.</p> <p>4. Travel by persons other than employees/foreign technicians.</p> <p>The Assessing Officer allowed only a part of the expenditure for both the assessment years but the reasons are not very clear. In any case, he disallowed travelling expenses by and large, which was the grievance of the assessee.</p> <p>In appeal, the Commissioner of Income Tax (Appeals) considered the issue of travelling expenses and was of the view that some of them are referable to contractual obligations that the assessee had in respect of the machinery division and other travelling expenses were also incurred in connection with the business of the assessee for the purposes of the machinery division.</p> <p>Feeling aggrieved, the Revenue preferred an appeal before the Tribunal and in paragraph 10 of its order the Tribunal has considered the factual matrix.</p> <p>It has been held by the Tribunal that for the assessment year 1993-94 all details of the expenses incurred by the assessee have been mentioned on pages 32 to 38 of the paper book and that these details were also filed before the Assessing Officer. The details relate to the name of the person travelling, place of visit, date of travel,</p>




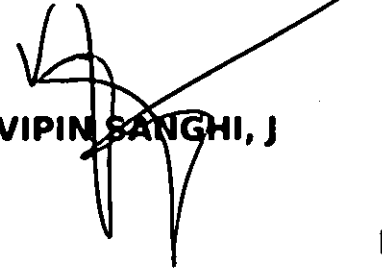
Sr. No.	Date	Orders
		<p>expense on fare and other expenses etc. The reason for travel in respect of each item was also indicated by the assessee before the CIT (A) and the nexus that the travel had with the import of machinery was also explained on pages 84 to 89 of the paper book before the Tribunal.</p> <p>As far as the second assessment year i.e. 1994-95 is concerned, a similar break up was given by the assessee on pages 55 to 65 of the paper book before the Tribunal.</p> <p>In addition, it appears that correspondence was placed on record to show the necessity of travel.</p> <p>In the face of all these details having been furnished by the assessee, the Tribunal held (and in our opinion rightly) that if the Assessing Officer wanted to disallow certain expenses it was incumbent upon him to specifically mention which of the expenses did not relate to the business of the machinery division instead of rejecting the contention of the assessee on an ad hoc basis with a general and inadequate observation that the expenses were not connected with the business of the assessee.</p> <p>The Tribunal has concluded that the nature of business of the assessee that is import of machinery on commission basis necessitated the expenditure incurred. The assessee was also required to provide after sales service which warranted the travel of Russian and</p>



Sr. No.	Date	Orders
		<p>other technicians.</p> <p>Having considered the material on record, we are of the view that the issue raised is only a question of fact, the CIT (A) and the Tribunal having concluded that the travel expenses incurred by the assessee were necessary for its business. Even if a question of law does arise, we are of the view that it is not a substantial question of law which would necessitate our consideration. This, of course, does not detract from our conclusion that the questions urged are essentially questions of fact raised by the Revenue.</p> <p>Under these circumstances, we are not inclined to entertain this appeal and it is accordingly dismissed.</p> <p>However, in respect of the assessment year 1994-95 for which the Revenue has filed a separate appeal bearing ITA No. 81/2006, learned counsel for the Respondent fairly submits that the second issue that has been raised, namely, deletion of a disallowance of Rs. 22,13,383/- made on account of alleged bogus purchases does arise out of the order passed by the CIT (A). Unfortunately, it appears that the Departmental Representative who appeared before the Tribunal was unable to point out this difference between the two appeals, leading the Tribunal to erroneously record that this issue does not arise in the appeal for the assessment year 1994-95.</p> <p>Under the circumstances, we are of the view that the following</p>



H.C.D.-I (a) Continuation Sheet

Sr. No.	Date	Orders
		<p>substantial question of law arises in respect of ITA No. 81/2006, namely:-</p> <p style="text-align: center;">“Whether the Income Tax Appellate Tribunal was correct in law and on the facts and circumstances of the case in dismissing the ground of appeal relating to alleged bogus purchases and holding that the same does not arise out of the order of the Commissioner of Income Tax (Appeals)?</p> <p>Having so framed the question of law, we are of the opinion that in view of the facts mentioned above, the question must be answered in the negative and in favour of the Revenue.</p> <p>Since the Tribunal has given no finding on the issue that has been raised, the matter should be remitted back to the Tribunal for determination on merits only in this regard in respect of the assessment year 1994-95. To this extent only, ITA No. 81/2006 is allowed.</p> <p>We may also note that this issue has been squarely dealt with by the Commissioner of Income Tax in para 14.1 of its order which appears to have been overlooked by the Tribunal.</p> <div style="text-align: right; margin-right: 100px;">  MADAN B. LOKUR, J </div> <div style="text-align: right; margin-right: 100px;">  VIPIN SANGHI, J </div> <p>AUGUST 17, 2006 mw</p>