



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

% Judgment delivered on 07.11.2008

+ **ITA 641/2007**

**COMMISSIONER OF INCOME TAX
DELHI –IV, NEW DELHI**

... Appellant

- versus -

HUGHES SOFTWARE SYSTEMS LIMITED ... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Prem Lata Bansal with Mr Sanjeev Rajpal

For the Respondent : Mr Ajay Vohra with Ms Kavita Jha and Mr Sriram Krishna

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE RAJIV SHAKDHER

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 Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. This appeal is directed against the order dated 29.09.2006 passed by the Income Tax Appellate Tribunal in ITA 2167/Del/2002 pertaining to the assessment year 1998-1999. The issue that is sought to be raised in this appeal relates to the allowability of direct expenses said to have been incurred by the assessee in respect of a project known



2. The extent of direct expenses claimed by the assessee was Rs 37,18,958/-. The assessee had entered into an agreement with PT Radio Telepon, Indonesia also known as Ratelindo for installation, testing and commissioning of a fixed digital radio cellular network system and related services. The assessee did not have the necessary expertise to execute the said project and, therefore, assigned the same to its parent company being Hughes Network Systems, USA (HNS). There was no formal agreement between the assessee and the parent company (HNS). However, they had an understanding vide letter dated 06.05.1997 that the total amount received by the assessee in relation to this project by way of the amounts received from the parent company (HNS) for services provided, would be taken into account for arriving at the profit earned by the assessee, after deducting actual estimated costs of rendering these services. It was also stated in the said letter dated 06.05.1997 that a final settlement between the parent company and the assessee would be arrived at for the project to allow the assessee the approximate profit anticipated at the start of the project except for any reduction of profit which is attributable to the items of work directly and completely under the assessee's control.

3. The project suffered an overall loss which was absorbed by



received in aggregate a sum of Rs 1,56,18,541/- towards completion of phase-II of the project. According to the assessee, it was entitled to deduct both direct and indirect expenses which had been incurred by it from this sum of Rs 1,56,18,541/- to arrive at the net income of the assessee in respect of this project. The Assessing Officer, however, was of the view that what the assessee received was net income itself and, therefore, no further deduction by way of expenses could be entertained. Consequently, the Assessing Officer disallowed the expenses claimed by the assessee.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) who, by an order dated 28.02.2002, allowed the claim of the assessee towards direct expenses but disallowed the claim in respect of indirect expenses. The Commissioner of Income Tax (Appeals) returned a clear-cut finding that the direct expenses incurred by the appellant company on the project to the extent of Rs 37,18,958/- cannot be denied as the same were fully identifiable.

5. Being aggrieved by this finding with regard to direct expenses, the revenue preferred the said appeal being ITA 2167/Del/2002 before the Income Tax Appellate Tribunal. It may be



of the Commissioner of Income Tax (Appeals) being aggrieved by the disallowance of their claim of indirect expenses. Both the appeals were disposed of by the said order dated 29.09.2006. The present appeal, however, is concerned only with the issues raised by the revenue in its appeal in respect of direct expenses before the Tribunal.

6. We have examined the material on record as well as the orders passed by the Assessing Officer, the Commissioner of Income Tax (Appeals) and the Tribunal and we note that the Tribunal has confirmed the finding returned by the CIT (Appeals) that the direct expenses incurred by the assessee were allowable as they were identifiable. The Tribunal also noted that the revenue could not show any material to controvert the finding of the CIT (Appeals) and show that the direct expenses allowed were not actually incurred by the assessee for the completion of phase-II of the Jakarta Project. This, we find is essentially a finding of fact. No perversity has been pointed out and as such we are not interfering with the order passed by the Tribunal. No substantial question of law arises for our consideration.

The appeal is dismissed.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J