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% 08.10.2009

Present: Mr. N.P. Sahni, Adv. for the Appellant.
Mr. Ajay Vohra, Ms. Kavita Jha and Ms. Akansha Aggarwal, Advs. for the Respondent.

+ ITA No. 1421/2008
ITA No. 7/2009

(Common Order)

The Tribunal decided the appeal for the assessment year 1996-97 vide order dated 16th April, 2004. The additional ground in that appeal taken by the Assessee related to expenditure incurred on advertisement and publicity. The Tribunal held that the Assessee was entitled to claim deduction of Rs.18,51,462/- on the aforesaid account.

Similarly, for the assessment year 1997-98 the CIT vide its order dated 19th March, 2002 had held that the Assessee would be entitled to deduction of Rs.19,42,082/- as expenditure on advertisement and publicity. This order of the Tribunal was not challenged by filing any further appeal and thus it attained finality. While giving effect to this order, Assessing Officer, however, restricted the benefit to return income of Rs. 50,111/-. While being so he relied upon the circular No. 549 dated 31st October, 1989 issued by the Central Board of Direct Taxes (CBDT).

The Assessee feeling aggrieved by this order filed



appeal before the CIT (Appeal) on the ground that proper appeal effect was not given inasmuch as the ITAT had granted deduction of Rs.18,51,462/-. The contention of the Assessee was accepted by the CIT (Appeal) which has been affirmed by the ITAT also in further appeal preferred by the Revenue.

We may mention at the outset that the issue as to whether approach of the ITAT is correct or not in holding that the appeal effect was not properly given, has not even been raised in the present appeal. The two questions which are raised relate to the order passed by the Tribunal in the first instance on 16th April, 2004 which was not challenged earlier.

Be as it may, we have heard learned counsel for the Appellant even on the issue as to whether appeal effect was properly given by the Assessing Officer or not.

We find that the CIT (Appeal) and the Tribunal were right in holding that once the Tribunal had decided that the Assessee is entitled to claim deduction of Rs.18,51,462/-, the Assessing Officer was required to give effect to this order and could not ignore the order passed in judicial proceedings and given preference to the CBDT circular. Even otherwise, such a question would not arise in the facts of this case.

Mr. Vohra, learned counsel appearing for the Assessee

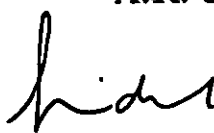


the appeal for the assessment year 1996-97, the Assessee l...
claimed deduction of the entire amount of Rs.18,51,462/- as part of
the expenditure incurred was not allowed in the year 1998-99 and
the authorities had held that since it was a revenue expenditure
incurred in the year 1996-97 entire expenditure was admissible as
revenue expenditure in that assessment year. It is because of this
reason the ITAT had allowed the deduction of Rs.18,51,462/-.

In these circumstances, no question of law arises.

Dismissed.


A.K. SIKRI, J.


SIDDHARTH MRIDUL, J.

October 08, 2009

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