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% 27.10.2009

Present: Ms. P.L. Bansal, Advocate for the Appellant.  
Mr. K. Sampath and Mr. R.K. Raghvan, Advocates for  
the Respondent.

*(Common Order)*

+ ITA Nos. 327/2009 & 926/2009

\* The Respondent-Assessee is a company incorporated under the Indian Companies Act, which is a subsidiary of Adidas India Private Limited. It is a joint venture of M/s. Adidas A.G., Germany and M/s. Magnum International Trading Co. Ltd. German company had allowed its trademark Adidas to be used by the Indian company for which the assessee is paying royalty @ 5% of sales. The assessee had also taken loan from the German company and it paid interest @ 6.6% on the said amount. The Assessing Officer observed that the LIBOR rate at the relevant time was only 4% and, therefore, he disallowed the difference in interest. The Income Tax Appellate Tribunal (ITAT) has allowed the interest @ 6.6% as paid by the assessee to the German company.

On going through the decision of the Income Tax Appellate Tribunal, which has considered this aspect in detail, we are of the view that no question of law, much less substantial question of law, arise for consideration.



In the first instance it cannot be said that the loan had to necessarily taken at the LIBOR rate, may be the minimum international rate, but it cannot be said that all international loan transactions are to be carried out at that rate alone. It is a common knowledge that in the actual loan transaction between the two parties, higher rate of interest can be agreed upon which may be marginally higher than the LIBOR rate. That apart, even otherwise, finding of fact is arrived at to the effect that at the relevant time the LIBOR rate was in and around 6% and not 4% as estimated by the Assessing Officer.

We had given sufficient opportunities to learned counsel for the Revenue to find out what was the LIBOR rate at the relevant time. She expressed her inability in this behalf. In these circumstances, we accept the findings recorded by the Tribunal that the LIBOR rate was in and around 6%.

Other issue sought to be raised by the Revenue in these appeals is in respect of the expenses claimed as business expenses under Section 37(1) of the Income Tax Act. The ITAT has remanded the matters back to the Assessing Officer on this aspect and we see no reason to interfere. Needless to mention, in order to enable the Assessing Officer to conduct the exercise as directed by the

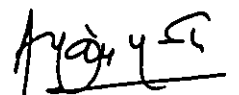


Tribunal, the assessee shall fully co-operate with the Assess  
Officer and provide the desired information and particulars in this  
behalf.

Question No.1 and 4 sought to be raised in the appeal are  
covered by the decision of this Court dated 22<sup>nd</sup> September, 2009 in  
ITA No.265/2009 and *Commissioner of Income Tax, Delhi vs.  
Woodward Governor India Pvt. Ltd.-(SC) 312 ITR 254*  
respectively.

In view of the above, we are of the opinion that no substantial  
question of law arises.

Dismissed.

  
A.K. SIKRI, J

  
SIDDHARTH MRIDUL, J

OCTOBER 27, 2009

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