



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

+ ITA No.100/2008

Date of Decision: 5th November, 2009.

COMMISSIONER OF INCOME TAX, DELHI-IV Appellant
Through: Mr. Sanjeev Sabharwal, Adv.

Versus

DENSO HARYANA PVT. LTD. Respondent
Through: Mr. C.S. Aggarwal, Sr. Adv.
with Mr. Prakash Kumar,
Adv.

% **CORAM**
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

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?

J U D G M E N T

A.K. SIKRI, J (ORAL)

1. Following questions are proposed to be raised by the Revenue in this appeal on the plea that these are substantial question of law:

- (a) Whether the ITAT was correct in law in deleting the addition of Rs.69,62,655/- made by the Assessing Officer under Section 92 read with Section 40A (2) of the Income Tax Act, 1961?



- (b) Whether the ITAT was correct in law in treating only Rs.52,80,000/- out of the total amount of Rs.2,11,20,147/- as capital expenditure?
- (c) Whether the ITAT was correct in law in allowing loss of Rs.1,91,24,374/- on account of foreign exchange rate fluctuation?

2. Insofar as, the question No.(c) is concerned, on 3rd March, 2009 itself this Court has observed that it was covered by the decision of this Court in ***Commissioner of Income Tax vs. Woodward Governor India Pvt. Ltd.-249 ITR 451***. We may only add that the aforesaid decision of this Court has since been upheld by the Supreme Court and the said judgment is reported as ***Commissioner of Income Tax, Delhi vs. Woodward Governor India Pvt. Ltd.-(SC) 312 ITR 254***.

3. Insofar as the first question is concerned, we may note that the Assessing Officer had disallowed the addition of Rs.69,62,655/- under Section 92 and 40A(2) of the Income Tax Act. The reason for disallowing, as noted by the Assessing Officer, was that the assessee had imported certain goods from M/s. Denso Corporation, Japan, a holding company at a price higher than similar goods purchased from local vendors. The CIT (Appeals) found it to be factually incorrect, inasmuch as, the Assessing Officer while coming to the aforesaid finding had compared the price of the goods at which they were imported with the price of the goods in the local market in



the subsequent years. The very basis of such a comparison was faulty and primarily influenced by this consideration the CIT (Appeals) deleted the addition which is confirmed by the ITAT. The approach of CIT (Appeals) is perfectly justified as the Assessing Officer had come to the conclusion that the price at which the goods were imported were higher by comparing the price with the price in the local market which prevailed in the subsequent years. The Assessing Officer was required to compare the said price which prevailed in the local market in the same year. It is a pure finding of fact recorded by the two Appellate Authorities below and, therefore, no question of law arises.

4. Insofar as, the question of law proposed at Sl. No.(b) is concerned, the Tribunal has capitalized 25% of Rs.2,11,20,147/- treating the same as capital expenditure. In support of this, the Tribunal has referred to the judgment of Supreme Court in ***Southern Switch Gear Ltd. vs. CIT-(1998) 232 ITR 359.***

5. We may only note that the assessee had also filed appeal against the aforesaid order of the ITAT, inasmuch as, the grievance of the assessee was that the entire amount of Rs.2,11,20,147/- should have been treated as revenue expenditure. The admitted facts are that under the Agreements dated 25th December, 1998 titled as "*Agreement for Technical Service*" and "*Agreement for Personnel Dispatching and Receiving*", the assessee had paid total amount of Rs.7.33 crore to M/s. Denso Corporation, Japan. Out of this Rs.2.11



crore was paid as technical assistance fee, which was to be provided in terms of Article 1 of the said agreement. It is only this amount which was claimed as revenue expenditure and balance amount of Rs.5.22 crore was treated as capital expenditure by the assessee itself.

6. In these circumstances, the only question would be as to whether the entire expenditure is to be treated as revenue expenditure or 25% thereof could be capitalized, as held by the Tribunal. In either event, this entire expenditure could be treated as capital expenditure. While this question shall be considered in the appeal preferred by the assessee, Insofar as the appeal of Revenue is concerned, we are of the opinion that no question of law arises.

8. The appeal is accordingly dismissed.

A.K. SIKRI, J.

SIDDHARTH MRIDUL, J.

November 05, 2009

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