* IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA No. 842 of 2009

% *Decided on : July 14, 2009.*

NOKIA INDIA P. LTD. ... Petitioner

through : Ms. A. Sumanth with Ms. Surekha Raman, Advocates.

VERSUS

THE INCOME TAX OFFICER ... Respondent

through: Mr. Subhash Bansal, Advocate

CORAM :-
THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE VALMIKI J. MEHTA

1. Whether Reporters of Local newspapers 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?

A.K. SIKRI, J. (ORAL)

1. For orders, see ITA No. 841/2009

(A.K. SIKRI)
JUDGE

(VALMIKI J. MEHTA)
JUDGE

July 14, 2009.
pmc

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Decided on : July 14, 2009.*

1) ITA No. 841 of 2009

NOKIA INDIA P. LTD. ... Petitioner

through : Ms. A. Sumanth with Ms. Surekha Raman, Advocates.

VERSUS

THE INCOME TAX OFFICER ... Respondent

through: Mr. Subhash Bansal, Advocate

2) ITA No. 842 of 2009

NOKIA INDIA P. LTD. ... Petitioner

through : Ms. A. Sumanth with Ms. Surekha Raman, Advocates.

VERSUS

THE INCOME TAX OFFICER ... Respondent

through: Mr. Subhash Bansal, Advocate

CORAM :-
THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE VALMIKI J. MEHTA

1. Whether Reporters of Local newspapers 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?

A.K. SIKRI, J. (ORAL)

1. CM Appl. No. 9337/2009 in ITA No. 841/2009

For the reasons stated in this application, we condone the delay in

CM stands disposed of.

2. CM Appl. No. 9368/2009 in ITA No. 842/2009 (exemption)

Exemption is allowed, subject to just exceptions.

CM is disposed of.

3. CM Appl. No.9367/2009 in ITA No. 842/2009

For the reasons stated in this application, we condone the delay in filing the present Appeal.

CM stands disposed of.

4. Though these appeals are filed under Section 260A of the Income Tax Act, having regard to the nature of order we propose to pass. It is not necessary to formulate the substantial question of law and decided the same. Since the two matters are connected, we will for the purpose of disposal refer to the facts of one of the case only.

5. The appellant herein had filed income tax return for the Assessment Year 2000-2001 and 2001-2002. The Assessing Officer selected the case for scrutinizing and notice was issued to the assessee under Section 142 of the Act. Assessment order was passed under Section 143(3) of the Act. The Assessing Officer made certain additions while making the assessment. We are not concerned herein with all those contentions made qua certain additions made by the Assessing Officer. The matter was taken up to the Income Tax Appellate

discussion. What we find is that the assessee had also claimed expenditure of Rs.41,87,112 incurred on account of cellular phones issued to the dealers, etc. It was a deduction in respect of this claim claimed as marketing expenditure, which was disallowed by the Assessing Officer. In Appeal filed by the assessee, CIT(A) treated this as capital and allowed tax appreciation @ 25% to the assessee. The ITAT has confirmed this finding in the appeal. The perusal of the order of the ITAT on this aspect would demonstrate in Para 18 of the impugned order. The observations of the CIT(A) on this question are reproduced and therefore, the matter is dealt with in the following manner:

> "18. Apropos ground Nos. 3, 4 & 5 assessee raised an alternate argument that in case expenditure is not held to be revenue in nature before the CIT(A) also, hence depreciation may be allowed. CIT (A) upheld the action of the AO by following observations:
>
> > "I have gone through the rival submissions. As regards the handsets given as gifts, as agitated in grounds of appeal No. 4 & 5, I am in agreement with the AO that the same cannot be allowed in the absence of full and proper evidence regarding the same. As the appellant ahs not submitted sufficient evidence before the AO as repeatedly mentioned by him in the order as well as in the remand report, I am unable to now accept the same. Even otherwise, once the appellant states that it has given 'gifts' to employees and dealers, it cannot say that these were for official use. A gift is given without any expectation of return from the receiver. Thus, a gift given for official use is itself contradictory. Besides there is no way of ensuring that the 'gifts' are used for official use of the company so as to say that the expenditure on the same was for business expediency

remain its assets and would have in any case been used for their own personal use rather than that of the company. Thus both the pleas cannot be accepted. Grounds of appeal No. 4 and 5 are therefore decided against the appellant and are dismissed.

As regards the handsets given by the appellant to the dealers, employees and AMCs amounting to Rs.51,86,602/- the AO has allowed deprecation stating that they were its assets which were being used for the appellant's business purpose. I am in agreement with the AO. Therese handsets cannot be allowed to be written of in the present AY merely because the appellant has given this treatment to them in its books of accounts. Two other arguments given by the appellant are that the hand sets were given to AMCs as 'swap handsets' to be given by them to customers whose defective handsets could not be repaired, and further that sample purposes either on a "consequential" basis or on a "free of charge" basis as this exercise enables the appellant to increase its market share in India and also build the Nokia brand in India. Both these arguments cannot be accepted. Firstly, for replacement of defective handsets the appellant co. has a separate and huge provision and the amounts spent over and above that provision are claimed as current repairs. Secondly, if it is argued that the giving away of sample handsets for display and promotional purposes increases its market share and establishes its brand name, then they are certainly on capital account, since increase in market presence and establishment of brand name have long term benefits to the appellant company. Hence, it has to be held that these are items of capital nature and the appellant derives enduring benefit from the same. The AO was therefore, justified in disallowing the claim of Rs.51,86,602/- as revenue expenditure, treating the same as capital in nature and allowing depreciation on the same as applicant. His action in so doing is upheld. Ground No.6 therefore, failed and is dismissed.

Ground No.7 relates to the AO's action in not allowing deprecation of the written down value of 74 cellular phone handsets issued to the appellant's employees

The appellant has submitted that marketing expenditure incurred by the appellant during AY 1998-99 on mobile handsets and accessories issued to its employees was considered as a capital asset in the hands of the appellant and deprecation @ 25% was allowed by the CIT(A)-XVI vide his order dated May 6, 2002. Accordingly, the appellant ahs requested that the AO should be directed to allow depreciation of Rs.42,741, being 25% of the written down value, as of March 21, 2000 of the total marketing expenditure of Rs.303,939 to the appellant for AY 2000-01.

In this regard, the AO has in his remand report stated that such depreciation has been duly allowed in the assessment order. In this connection, the appellant has submitted that no depreciation has been by the AO on the written down value of such mobile phone handsets, as evidence by the computation of taxable income enclosed with the assessment order for AY 2000-01.

I have gone through the submissions of the rival parties. This being a matter of record, the AO is directed to verify from his records and if not already allowed, allow depreciation to the appellant on the mobile phone handsets and accessories issued to its employees which were considered as a capital asset in the hands of the appellant during AY 1998-99 and depreciation @ 25 percent was held to be allowable by the CIT()-XVI. For statistical purposes the appeal on this ground is allowed"

19. No worthwhile arguments have been raised by the Ld. Counsel to controvert the findings of CIT(a). Assessee had raised alternate claim to allow deprecation drawn, CIT(A) has given appropriate directions in this behalf, we see no infirmity in the order of the CIT(A). Ground Nos. 3, 4 & 5 of the assessee are dismissed."

6. Neither the nature of the arguments advanced by the counsel for the assessee are taken note of nor they are dealt with. In a summary manner, the submissions of the assessee are rejected by stating that

was argued before us on this aspect at length and on the presumption that same arguments must have been advanced before the learned ITAT as well, we are of the opinion that such an argument would not have been brushed aside in a cursory manner by not even taking note of those arguments and dealing with the same.

7. The learned counsel appearing for the assessee has argued that the expenditure on account of cellular phones/handsets given to the dealers can be classified into two paras. Without taking note of this arguments in detail, on this ground alone that the order in this regard is non-speaking, this para of the order is set aside and the matter is remitted back to the ITAT to take note of the arguments as advanced by the assessee and deal with the same by proper reasons.

8. Another claim made by the assessee was about the provision for obsolescence to the extent of Rs.3,55,750. This was also disallowed by the Assessing Officer. However in appeal, CIT(A) this provision of obsolesce was reduced to 25%.

9. From the reading of the orders of the Assessing Officer as well as CIT(A), we find that in respect of this claim, the Assessing Authority had sent questionnaire to the assessee to furnish details and

such questionnaire, however, as a fact the Assessing Officer found that the assessee had not furnished any papers/documents in support of claim made in provision according to the obsolescence of inventory. Thus, the claim was disallowed only on account of non-furnishing of the requisite information in this regard. Having regard to the aforesaid facts, insofar as these two assessment years is concerned and the amount involved, so far the issue of the claim for obsolescence is concerned, we are of the opinion that no substantial question of law arises for our consideration. We may, however, make it clear that since the assessments order were passed, which was modified to the extent mentioned above by the CIT(A) taking into consideration the factual position appearing in these two assessment years, it would not preclude the assessee for giving requisite information in this behalf for succeeding years for sustaining their claim in this regard. Once such an information is provided while making assessment, Assessing Officer would give due consideration.

10. Another ground relates to the closing stock. We find from the order of the Tribunal that there is no discussion on this aspect whether such a ground was pressed at all or not and the same is not clear. If it is

not considered, it is appropriate for the assessee to raise this issue before the ITAT in the first instance by moving an application.

11. These appeals are disposed off in the aforesaid terms.

12. Copy of the order be given *Dasti* to counsel for the parties.

(A.K. SIKRI)
JUDGE

(VALMIKI J. MEHTA)
JUDGE

July 14, 2009.
pmc