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% 25.03.2009

Present: Mr Subhash Bansal, Sr.Standing Counsel for the
Income Tax Department/Appellant.

+ CM 4223/2009

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Allowed, subject to all just exceptions.

ITA No.370/2009

The Assessee had claimed certain deductions under various Acts in its profit and loss account like expenditure incurred on advertisement and sales commission, on training and recruitment as well as by loss arising on account of fluctuation in rate of foreign currency. Though the Assessing Officer disallowed this deduction, in the Appeal, filed by the Assessee, the CIT deleted the additions vide his Order dated 30.9.2005. Appeal of the Revenue is against the Order of ITAT dated 29.2.2008. In the Appeal filed against the Order of ITAT, according to the Appellant following substantial questions of law arise for our consideration:-

- "A. Whether on the facts and circumstances of the case learned ITAT is justified by not forming its own opinion and upheld the issue of deletion of disallowing made on account of advertisement and sales promotion expenses by confirming the order of CIT(A)?
- B. Whether in the facts and circumstances of the case learned ITAT is justified by allowing the expenses amounting to Rs.53.05 lakhs incurred on training and recruitment being treating the same as revenue expenditure by following the decision of CIT -vs- Delhi Cloth



Mills, which is not acceptable being distinguishable with the facts of present case?

- C. Whether learned ITAT is justified in upholding the action of CIT(A) on the point of allowance of loss on account of Foreign Exchange Fluctuation loss when the issue is subjudice pending under SLP before Hon'ble Supreme Court?"

In so far as the proposed question of law 'C' is concerned it is covered by a Division Bench Judgment of this Court entitled *Commissioner of Income Tax vs. Woodward Governor India P. Ltd.*, (2007) 294 ITR 451 (Delhi). As far as issue stated in questions 'A' and 'B' are concerned, having regard to the facts of this case, we are of the opinion that a finding of fact has been arrived at by the CIT(A) that these are in the nature of revenue expenditure. The finding of CIT(A) has been affirmed by the ITAT. There is no demonstrable perversity in the said order.

No substantial question of law arises for our consideration.

Dismissed.


A.K. SIKRI, J.


RAJIV SHAKDHER, J.

MARCH 25, 2009

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