



I-08

% 27.07.2010

Present: Ms. P.L. Bansal, Advocate, for the appellant.
Mr. Ajay Vohra and Ms. Kavita Jha, Advocates, for the respondent.

+ITA No. 142/2009

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The issue raised in this appeal is about the deduction claimed by the assessee in respect of the administrative expenses, determined and claimed by the assessee on the basis of the report of M/s. Price Water House, under Section 37 of the Income Tax Act. This appeal relates to the assessment year 1997-98 and therefore, the relevant period is only three months, i.e. from 1st January, 1997 to 31st March, 1997 in respect of which the expenses on the aforesaid basis were claimed by the assessee.

The Assessing Officer did not allow the deductions in the manner claimed by the assessee. The CIT (A) affirmed the order of the Assessing Officer, however, the Income Tax Appellate Tribunal reversed the same and directed the Department to implement the report of M/s. Price Water House. We may note that in respect of the subsequent assessment years also the Income Tax Appellate Tribunal had given the same directions. The Revenue had filed the appeals which were dismissed.



According to the assessee, substantial amounts became recoverable from the Department as a result of those orders. Since the Department had not made refunds, the assessee filed a writ petition bearing W.P.(C) No. 7304/2005 seeking a mandamus to the Department for granting refund along with interest. This writ petition was allowed by this Court and the judgment is reported as *Glaxo Smith Kline Asia P. Ltd. vs. Commissioner of Income Tax and Ors.* in *290 ITR 35*. Against that order passed by this Court, the Revenue has filed a Special Leave Petition (Civil) No. 18121/2007. That Special Leave Petition is still pending before the Hon'ble Supreme Court and the matter has come up before the Hon'ble Supreme Court for hearing on different occasions. On 10th September, 2008, the Hon'ble Supreme Court noted the controversy between the parties and passed the following order: -

“....The basic controversy in this case appears to be regarding allocation of expenses between the assessee and SBCH. Assessee claims deduction under Section 37 of the Income Tax Act, 1961 on the basis of a formula suggested by Price Waterhouse, dated September 20, 1997. They have suggested a formula. It may be noted that allocation of expenses is a complex exercise. The assessee, in the present case, has relied upon the formula suggested by Price Waterhouse. We would like the Department to engage an expert in such matters and inform us as to whether the formula suggested by Price Waterhouse is appropriate in the facts of the present case. If not, then, the said expert may suggest any other alternate



formula. On receiving the report of the expert, we will ourselves examine as to which formula should be appropriately applied to the facts of the present case. If the expert to be engaged by the Department finds that the formula suggested by the Price Waterhouse is appropriate, then, it would put an end to the entire controversy.”

Thus the Supreme Court had observed that this issue is to be decided once and for all, and on receiving the report of the expert, the Supreme Court itself would examine as to which formula should be appropriately applied to the facts and circumstances of the case. However, when the matter came up before the Supreme Court on 25th November, 2009, after hearing the counsel for the parties, the Court was of the view that in respect of the assessment years relevant to the accounting year April'97 to March'98 onwards upto April'04 to March'05, the exercise is “revenue neutral” and therefore, the Court would not wish to interfere with the aforesaid financial years' accounting. The relevant portion of the order containing the aforesaid observations is reproduced hereunder: -

“....Having gone through the record, we find that during the assessment years relevant to the Accounting Year April, 1997 to March 1998 onwards upto April, 2004 to March, 2005, the Department has been assessing the cross charges on purely adhoc basis. This cannot continue for all times. At the same time, we also find that during the relevant financial years mentioned above, the exercise is revenue neutral. Therefore, we do not wish to interfere with the above-mentioned financial years' accounting.”



There is, thus, no impediment in deciding the present appeal since this appeal relates to the assessment year 1997-98, relevant to accounting year 1996-97, and the concerned period is 1st January, 1997 to 31st March, 1997 in respect of which there is no dispute that it is “revenue neutral”. Nothing survives in the present appeal and it is dismissed on this ground.

We may also refer to the order dated 29th April, 2010 passed by this Court in ITA No. 925/2009 which appeal pertained to the assessment year 2002-03 and taking note of the same facts, the Court had dismissed that appeal.


A.K. SIKRI, J.


REVA KHETRAPAL, J.

JULY 27, 2010

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