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% 06.12.2010

Present: Ms. Prem lata Bansal, Advocate for the Revenue.
Ms. Kavita Jha, Advocate with Mr. S. Shukla, Advocate for
the respondent assessee.

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+ITA 1045/2010-

The Assessing Officer while carrying out the assessment made an addition of ₹ 2.26 crores in the income of the assessee by disallowing the aforesaid sum claimed by the assessee as earning in foreign currency on account of reimbursement of expenses. According to the Assessing Officer, even when various opportunities were given, the assessee could neither produce any agreement with US Parent Company for reimbursement of expenses nor produced any evidence with respect to incurring of expenses and simultaneous credit by the foreign Company.

In so far as receipt in foreign exchange is concerned, that was not in dispute at all. The ITAT has affirmed the decision of the CIT (A), *inter alia* stating as under:-

“We have heard the rival submissions and perused the material available on record and have gone through the orders of the authorities below and the judgment cited by Ld DR of the revenue. We are in agreement with Ld. CIT (A) and also with Ld. AR of the assessee that these two observations of the Assessing Officer are not correct that as per the submission of the Ld AR before the Assessing Officer, there was no agreement of the assessee company with its parental company



and that debit note was not produced before the Assessing Officer because we find that these documents were said to be duly submitted before the Assessing Officer alongwith the letter dated 24.3.2004 and the Assessing Officer has stated in the assessment order that submissions were made by the AR of the assessee as per letter dated 24.3.2004 which means that the Assessing Officer is acknowledging the receipt of this letter dated 24.3.2004. This letter is appearing on pages 17 to 19 of the paper book and as per para No. 1 of this letter, photo copy of the agreement alongwith the FIRC were submitted by the assessee before the Assessing Officer. Regarding debit note, the Assessing Officer says that debit note was of ₹ 478554/- whereas as per copy of debit note as appearing on page No.22 of the paper book, we find that the amount of this debit note is not ₹ 478954/- but US Dollors 478954. It was the objection of the Ld. DR of the revenue that photo copy of the ledger account was also furnished for the first time before the Ld CIT (A) but we find that it is noted by the Assessing Officer in para No.8 of the assessment order that a ledge account was enclosed with the letter dated 24.3.2004 showing the debit of the amount under the head air ticket and credit under the heading reimbursement and hence this objection of the Ld. DR of the revenue is also factually incorrect that photo copy of the ledger account was furnished by the assessee for the first time before the Ld. CIT(A). The other objection of the Ld DR of the revenue was that copy of FIRC and books of accounts were also not produced before the Assessing Officer but we find that



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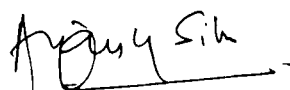
this is also not factually correct because as per letter dated 24.3.2004 as appearing on pages 17 to 19 of the paper book, copy of FIRC for the receipt of ₹ 2.36 crores as submitted before the Assessing Officer and regarding books of accounts, we find that neither any observation has been made by the Assessing Officer that books of accounts were asked to be produced but not produced nor Ld. CIT (A) has decided this issue on the basis of books of accounts. We find that all the objections of the Ld DR of the revenue were regarding admission of fresh evidence by Ld. CI(T (A) without recording reasons for admitting the same and without giving opportunity to the Assessing Officer but since we have noted that in fact, no fresh evidence was produced by the assessee before the Ld. CIT (A), all these objections of the Ld DR of the revenue are nonexistent. In view of this fact, the judgment cited by Ld. DR of the revenue is also not applicable in the present case. Regarding merit of deletion by Ld CIT (A); no argument was advanced by the Ld. DR of the Revenue and we find that Ld. CIT (A) has decided this issue after examining all aspects of the matter and we find no reason to interfere in the order of Ld CIT(A) on this issue. We, therefore, uphold the same and this ground of the revenue is rejected.”

It is clear from the above that both CIT (A) as well as ITAT have recorded a finding of fact that the assessee had produced the agreement with covering letter dated 24.3.2004. The CIT (A) returned this finding after going through the assessment record.



In these circumstances, when the present appeal came up for hearing for preliminary hearing on 26th October, 2009 learned counsel for the Revenue had sought time to verify the record and to find out as to whether alongwith the letter dated 24.3.2004, copy of the agreement was attached or not. Various opportunities were given to the Revenue to produce the same. On the last date of hearing i.e. 26th October, 2010 one final opportunity was granted subject to payment of cost of ₹ 10,000/- However, even today, learned counsel for the Revenue shows her inability to produce the said letter. She submits that the aforesaid letter dated 24.3.2004 is not available on record.

In these circumstances, the finding of fact arrived at by the CIT (A) as well as ITAT which is the final authority on facts, cannot be interfered with. No question of law arises in this appeal it is dismissed accordingly.


A.K. SIKRI, J.


INDERMEET KAUR, J.

DECEMBER 06, 2010

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