



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

% Judgment Delivered on: 04.05.2010

+ **ITA 513/2009 and 552/2009**

**THE COMMISSIONER OF INCOME TAX Delhi V** ... Appellant

- versus -

**PUNJ LLOYD LTD.** ... Respondent

**Advocates who appeared in this case:**

For the Appellant : Ms Sonia Mathur

For the Respondent : Mr Ajay Vohra and Ms Kavita Jha

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE V.K. JAIN**

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 Digest?

**BADAR DURREZ AHMED, J. (ORAL)**

1. These appeals, in respect of Assessment Years 2003-04 and 2004-05, arise out of the Income Tax Appellate Tribunal's common order dated 03.10.2008 passed in ITA No. 2867/Del/2007 and 2868/Del/2007 respectively. Notice was issued by this Court on 10.08.2009 on this appeal only on two issues. The first issue is with regard to the disallowance of deduction under Section 80HHB of the Income Tax Act, 1961. The Revenue was of the view that the assessee had failed to attribute any head office expenses to the foreign branches of the assessee company and that the Assessing Officer has correctly estimated an amount of Rs 1.5 crores relating to the Assessment Year 2003-04 and Rs 1 crore relating to the Assessment



Year 2004-05 as being the expenditure attributable to the foreign projects and consequently made an addition of Rs 30 lakhs in respect of the Assessment Year 2003-04 and a sum of Rs 20 lakhs relating to the Assessment Year 2004-05. The said amounts were computed being 20 per cent of the aforesaid expenditure attributable to the foreign projects. The said addition was made on account of the disallowance of the deduction under Section 80HHB to the aforesaid extent.

2. The second issue relates to the addition of Rs 10 lakhs made by the Assessing Officer on account of the expenditure allegedly incurred by the assessee on behalf of other companies alleged to have been in occupation of the building taken on lease by the assessee. The said addition was deleted by the Commissioner of Income Tax (Appeals) as well as by the Income Tax Appellate Tribunal.

3. Insofar as the first issue is concerned, the Assessing Officer was of the view that the company has not attributed any part of its head office expenses to the foreign branches of the assessee company. Since no details were provided to the Assessing Officer in this regard, the Assessing Officer was left with no alternative but to estimate the aforesaid amounts of Rs 1.5 crores and Rs.1 crore as being attributable to the foreign projects and subsequent thereto the aforesaid additions were made in respect of each of the assessment years in question on account of the disallowance of deduction under Section 80HHB. The Tribunal came to the conclusion that the



disallowance by the Assessing Officer was not on account of any defect pointed out in the accounts of the assessee. Nor had the Assessing Officer pointed out any defect with regard to the computation of the profits of the foreign projects which were eligible under Section 80 HHB. Consequently, the Tribunal took the view that the decision of the Commissioner of Income Tax (Appeals) in deleting the said allowance made by the Assessing Officer was correct. The Tribunal concluded that the Assessing Officer had merely deleted the disallowance on the basis of presumption without bringing any material on record. The Tribunal, therefore, confirmed the findings of Commissioner of Income Tax (Appeals).

4. We have heard the counsel for the parties and are of the view that a part of the head office expenses, on principle, are to be attributed to the foreign projects. This is also not disputed by Mr Vohra, who appears on behalf of the respondent/assessee. However, it is also clear that the Assessing Officer has merely taken some ad hoc figure and attributed the same towards expenditure on foreign projects as a part of the head office expenses. The manner in which the Assessing Officer has come to the computation of Rs 1.5 crores and Rs 1 crore as being attributable to the foreign projects is not at all based on facts or any logic. But, at the same time, as pointed out above, it is undeniable that some part of the head office expenses are to be attributed to the foreign projects. It is for this reason that we are of the view that the Tribunal's order to this extent ought to be set



aside and the matter be remanded to the Assessing Officer to compute, on the basis of some rationale, the exact amount of head office expenses which could be attributed to the foreign projects in respect of each of the years. However, such re-computation would be subject to the maximum that was allocated to him in this round. It is ordered accordingly.

5. Insofar as the second issue is concerned, we find that the Assessing Officer relied upon the observation of the Special Auditor to the effect that some common expenditure had been allocated to some of the sister concerns of the assessee company who were also located in the same building at 17-18 Nehru Place, New Delhi. The Special Auditor observed that they were unable to verify whether the allocation made by the assessee company in respect of the common expenditures was appropriate and fair and as to whether the entire common expenditure had been allocated. Consequently, the Special Auditor observed that this aspect needed detailed examination.

6. Pursuant to the said remarks of the Special Auditor, the Assessing Officer issued a questionnaire to the assessee to furnish details with regard to the common expenses and the actual allocation of such common expenses alongwith a detailed working thereof. In response to the said questionnaire, the assessee company submitted their letter dated 22.11.2006 wherein they pointed out that the commercial building situated at 17/18 Nehru Place, New Delhi was not owned by the assessee company. The said commercial



building was owned by somebody else and it was run as a business centre and the assessee company was one of the occupants operating from the said premises on a lease arrangement. The assessee company also explained that the lease rent was paid by the assessee company for the area occupied by it. It was also explained that whenever any other company occupies any portion, out of the area taken by the assessee on lease, the assessee company recovers rental from such other company and that such recoveries are included under the head – “other income” -as per the Profit & Loss Account of the Assessee company. However, assessee company also submitted that there are some other companies, other than those operating within the premises taken on lease by the assessee company, which are also located in the same building and such other companies have their own separate arrangement with the business centre.

7. Despite the above explanation, the Assessing Officer observed that there are still some common expenses like water, electricity, watch and ward staff facility, minor repairs, maintenance of common areas, etc. for which no documentary evidence regarding sharing of such common expenses were furnished by the assessee. Consequently, the Assessing Officer, on an estimated basis, which, according to him, was a fair estimate, concluded that an amount of Rs 10 lakhs would be the expenditure relating to the other entities and, therefore, an addition of Rs 10 lakhs was made.

8. The Tribunal returned the finding on this aspect of the matter in



para 23 of the impugned order. The finding is as under:

“We have considered the rival submission. It is noticed that the AO has not brought on record any evidence to show that any portion of the premises as occupied by the assessee is being used by any other company or companies. It is further noticed that the Id. CIT(A) has taken into consideration the fact that the AO has not disputed the fact that the other companies operating from the said premises are not occupying the leased area and having their own separate arrangement with the business centre. It is further noticed that the disallowance as made by the AO is only on presumptions and on an adhoc basis. It is further noticed that no evidence has been brought or found to show that the assessee has incurred any expenditure that relates to any other companies.”

9. From the above extract, it is apparent that the Tribunal was of the view that the Assessing Officer has not brought on record any evidence to show that any portion of the premises, as occupied by the assessee, was being used by any other company or companies. This finding is clearly contrary to the record inasmuch as the assessee itself admitted in its reply to the questionnaire submitted by the Assessing Officer that in the portion taken on lease by the assessee company, certain other companies were also operating. Though, the assessee made it clear that such other companies were paying lease rentals to the assessee company for use of such space and the same are reflected in P&L Account. As a result of this, we are of the view that the finding of the Tribunal that no evidence had been brought or found to show that the assessee had incurred any expenditure in relation to any other



companies is contrary to the record and requires re-consideration. The learned counsel for the respondent/assessee states that they have all the details to show the allocation of the common expenditures and the amounts recovered from the other companies and there was no occasion for making any addition on this ground.

10. In view of this, we also set aside the findings of the Tribunal on this aspect and remit the matter to the Assessing Officer to compute the addition, if any, subject to a maximum of Rs 10 lakhs, on the basis of hard evidence which may be produced by the respondent assessee.

11. We also make it clear that if any additions are made, consequential benefits would be given to the sister companies, if otherwise admissible in law.

With the aforesaid directions, the matter to the limited extent indicated above, is remitted to the Assessing Officer.

The appeals stand disposed of.

**(BADAR DURREZ AHMED)**  
**JUDGE**

**(V.K. JAIN)**  
**JUDGE**

**MAY 04, 2010**

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