



THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 14.05.2010

+ **ITA 533/2010**

THE COMMISSIONER OF INCOME TAX-IV Appellant

- versus -

INFOGAIN INDIA BPO PVT. LTD Respondent

Advocates who appeared in this case:-

For the Appellant : Mr Sanjeev Sabharwal
For the Respondent : None

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)

CM 5207/2010

The delay in re-filing the appeal is condoned.

This application stands disposed of.

ITA 533/2010

1. This appeal is directed against the order of the Income Tax Appellate Tribunal dated 27.02.2009 in ITA 2609/Del/2007 relating to the assessment year 2004-05.

2. The assessee had paid certain settlement expenses. The



of rent. The Commissioner of Income Tax (Appeals) had also confirmed the disallowance both under Section 30 as well as 37 (1) of the Income Tax Act, 1961 (hereinafter referred to as 'the said Act'). The Income Tax Appellate Tribunal came to the conclusion that though the amount was not allowable under Section 30 of the said Act, the same could be allowed under Section 37(1) as it had been incurred for a business purpose.

3. The Income Tax Appellate Tribunal had placed reliance on the decision of this Court in the case of **CIT v. Microsoft Corporation of India Private Limited: ITA 111/2008** decided on 21.08.2008. This Court in the case of ***Microsoft Corporation (supra)***, *inter alia*, concluded that an expense would be allowed under Section 37(1) of the said Act if it is shown to have been commercially expedient and that commercial expediency must be viewed from the perspective of a prudent businessman and not from the point of view of the revenue. Considering the said decision, the Tribunal came to the conclusion that the settlement in the present case was also by way of commercial expediency and the amount was paid in terms thereof. The Tribunal particularly noted that, in fact, the assessee in the present case was in a better footing than in the case of ***Microsoft Corporation (supra)*** because the liability to pay the rent for a minimum period of nine months was a contractual liability and the amount finally settled was actually less than the amount which would have been payable by it as per the agreement.
4. Consequently, the Tribunal held that the amount in question paid by the assessee on account of compensation was deductible under Section



business. The Tribunal has correctly applied the law. No interference is called for with the factual findings of the Tribunal as no perversity has been pointed out.

The appeal is dismissed.

BADAR DURREZ AHMED, J

V.K. JAIN, J

MAY 14, 2010
SR