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

+ ITA 192/2010

THE COMMISSIONER OF INCOME TAX Appellant
Through: Mr. Sanjeev Sabharwal, Advocate

versus

JINDAL PHOTO LTD. Respondent
Through: None

% Date of Decision: 10th August, 2010**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE MANMOHAN**

1. Whether the Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

MANMOHAN, J

1. The present appeal has been filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for brevity "Act 1961") challenging the order dated 05th June, 2009 passed by the Income Tax Appellate Tribunal (in short "ITAT") in ITA No. 3808/DEL/2007 for the Assessment Year 2004-2005. By virtue of the impugned order, ITAT has deleted the addition of Rs.8,54,53,935/- made by the Assessing Officer (hereinafter referred to as "AO") on account of deduction claimed under Section 80-IB.

2. Briefly stated the relevant facts of this case are that a return declaring income of Rs. 17,97,37,894/- filed by respondent-assessee was



processed u/s 143 (1) of Act, 1961. It was observed by the AO during the assessment proceedings that the assessee had three units and the assessee was entitled to claim deduction under Section 80-IB with respect to two of its manufacturing units. For unit – II, assessee was entitled to claim deduction @ 30% of profit but Nil in respect of losses and with regard to unit –III the claim was eligible for 100% deduction in respect of the profits.

3. AO observed that respondent-assessee had claimed deduction under Section 80-IB of Act, 1961 of Rs.27,12,03,229 in respect of Unit – III (PPD Unit). AO consolidated the expenses of all the units and allocated the expenses in the ratio of turnover of the eligible unit to the total turnover of the assessee for the purpose of computing the profits of Unit-III. On this basis, the deduction in respect of profits of Unit –III was recomputed at Rs 18,57,49,394. The AO further observed that the expenses were not correctly recorded in the books of accounts and were not properly allocated. Thus, AO disallowed the claim of Rs.8,54,53,935/-.

4. An appeal was filed by the respondent-assessee against the order of AO before the Commissioner of Income Tax (Appeals) (hereinafter referred to as “CIT (A)”) and the same was allowed in favour of the assessee. The Revenue appealed against the order of CIT (A). By the impugned order, ITAT dismissed the Revenue’s appeal.



5. Mr Sanjeev Sabharwal, learned counsel for the Revenue submitted that ITAT had erred in law in deleting the reduction of Rs 8,54,53,935/- made by AO u/s 80-IB of Act, 1961.

6. In the present case, after observing that CIT (A) had examined the expenditure under each head and thereafter computed the profits of Unit-III at Rs.26,69,38,154, ITAT has concluded that the finding of CIT (A) is a positive one and is based upon analysis of expenses under various heads. ITAT has also held that all details of the expenditure were on record and they had been examined by CIT (A). Accordingly, ITAT confirmed the deletion made by CIT (A).

7. We are of the view that the Revenue has failed to point out any infirmity in the computation made by the CIT (A) and all the expenses have been very well examined by CIT (A) and ITAT. In our opinion, the factual findings of the final fact finding authority are neither perverse nor contrary to record. Accordingly, we find that no substantial question of law arises in the present appeal. Hence, the present appeal being, bereft of merit, is dismissed *in limine* but with no order as to costs.

MANMOHAN, J

CHIEF JUSTICE

AUGUST 10, 2010

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