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

**{ITA 1172 of 2009}**

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Judgment Delivered On: 08.9.2010

**THE COMMISSIONER OF INCOME TAX**

. . . APPELLANT

THROUGH:

Ms.Prem  
Advocate

Lata Bansal,

VERSUS

**NAPCON TURBO CHARGERS LTD.**

. . .RESPONDENT

THROUGH:

Mr. Kapil Goel, Advocate.

**CORAM:-**

**THE HON'BLE MR. JUSTICE A.K. SIKRI  
THE HON'BLE MS. JUSTICE REVA KHETRAPAL**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

**A.K. SIKRI, J. (ORAL)**

1. The respondent assessee is in the business of manufacturing of Turbo Chargers. Because of some compulsions, economic or market, the production of Turbo Chargers could not be carried out. However, the assessee company did not close down. In the assessment years 2002-03 and 2003-04, in the return filed by the assessee, it claimed certain expenses which were denied by the Assessing Officer on the ground that there was no business activity of the assessee during these years. In the appeal filed by the assessee in respect of those years, the CIT (Appeal) found that the assessee had not closed-down the business entirely and only manufacturing work were under suspension. On these basis, the business expenses were allowed. The order passed by the



preferred appeal under Section 260A of the Act which was registered ITA 376/2009. However, this appeal was dismissed by this Court on 1<sup>st</sup> April, 2009 accepting the findings of the Tribunal that in the assessment year 2002-03 as well as in the assessment year in question i.e. 2003-04, the business of Turbo Charges was in existence and merely because orders were not received, there could not be any adverse inference. The revenue filed SLP against this order which was also dismissed by the Supreme Court on 6<sup>th</sup> November, 2009.

2. In the present appeal, we are concerned with the assessment year 2004-05. In this year again, the Assessing Officer had passed stereo-type order and disallowed the business expenses on the ground that there was no business activity. The CIT (A) allowed the appeal of the assessee partly. He returned the finding that the business had not been closed. At the same time, the expenses were allowed to the extent of 90%. In these circumstances, both the revenue as well as the assessee preferred appeal against this order. The Tribunal has allowed the appeal of the assessee and dismissed that of the revenue by following its earlier order in respect of assessment year 2003-04.

3. In view of the categorical finding recorded that the company had never closed down its business, and these findings have been accepted in respect of earlier assessment years as well, the order of the Assessing Officer disallowing the business expenses was clearly erroneous. However, at the same time, we find that the assessee had claimed business expenses under the following head:-

“Cost of manufacturing and Sales	- Rs.5,40,148
Sales Admn. Expenses	-Rs.28,20,308
Depreciation	-Rs.62,00,756
Preliminary expenses written of	<u>-Rs. 1,519</u>



4. The argument which is raised by Ms. Bansal, learned counsel appearing for the revenue is that as per the assessee's own admission, there was no manufacturing operation of Turbo Chargers due to technical problem and for want of orders. She further submits that this was so stated in the Director's report annexed with the return of income filed for the assessment year in question. Thus, her submission is that even if the assessee had not closed the business and business activity was going on, for want of manufacturing operation of Turbo Chargers, during the entire year, the assessee was not entitled to depreciation.

5. Learned counsel for the assessee has refuted this submission of the revenue. However, fact remains that even if one goes on the premise that business of the company had not closed down, and if the company was entitled to claim depreciation, it was necessary for the assessee to prove and show on record that the machinery in question was used. We are also of the opinion that at this stage that the assessee had diversified its manufacturing activity as it had started manufacturing of coin blanks. However, no details are furnished in respect of the aforesaid claim of depreciation namely, whether it was on the plant and machinery meant for Turbo Chargers or for the plant and machinery meant for manufacturing of coin blanks. It is also possible that same machinery was used for the manufacturing of coin blanks. Whether there was any commercial production of coin blanks in the year in question, is also indiscernible from the records.

6. For these reasons, we are of the view that in so far as claim of depreciation is concerned, the matter needs to be remitted back to the Assessing Officer. The Assessing Officer shall proceed on the premise that the assessee carried out the business activity in the relevant assessment year. On that basis claim of depreciation would be



not, if used, for what period and depending upon these facts, the cla  
of depreciation shall be determined in accordance with the provisions of  
Income Tax Act.

7. Appeal is disposed of in aforesaid terms.

**(A.K. SIKRI)  
JUDGE**

**(REVA KHETRAPAL)  
JUDGE**

**SEPTEMBER 8, 2010.**  
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