UNREPORTED

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

\+ **ITA 402/2008**

THE COMMISSIONER OF INCOME TAX-V ..... Appellant
Through: Ms. Suruchi Aggarwal and
Mr. Chandramani Bharadwaj, Advocates

versus

PEROT SYSTEMS TSI (INDIA) LTD. ..... Respondent
Through: Mr. Ajay Vohra and Ms. Kavita Jha, Advocates

% DATE OF DECISION: September 23, 2010

CORAM:
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

A.K. SIKRI, J. (ORAL)

1. Admittedly respondent-assessee is engaged in the business of manufacture and export of computer software. It operates through the STP units located at Noida, Gurgaon and Chennai. In the Income-tax return filed for the assessment year 1999-2000, it had claimed certain

interest income from bank deposits made in connection with software business and interest from security deposits made in connection with software business. The assessing officer disallowed the claim of exemption in respect of these incomes on the ground that they were not directly derived from the export business. This decision of the assessing officer rejecting the claim of exemption in respect of aforesaid incomes has been maintained till the level of Tribunal and insofar as that part is concerned, the assessee has accepted the same.

2. The dispute is regarding three items of incomes in respect of which exemption was sought under Section 10A of the Act, which was disallowed by the assessing officer but the Income-Tax Appellate Tribunal has allowed the same. These are as under:-

(i) Amount of ₹ 11.76 lakhs received by the assessee as reimbursement of expenses incurred in obtaining ISO certification.

(ii) Reimbursement of ₹ 9,00,215/- relating to rent satellite charges, printing, stationery, etc. from HCL Technologies Ltd.

(iii) Corporate charges amounting to ₹ 20 lakhs earned from the sister concern, i.e., HCL Technologies Ltd.

3. Insofar as first item is concerned, the admitted facts are that the assessee had spent a sum of ₹ 23,52,000/- in obtaining ISO quality

by the EXIM Bank, which amounted to ₹ 11,76,000/-. It was in this backdrop that the assessee had claimed exemption of the receipt of the aforesaid amount under Section 10A of the Act. The Tribunal found, on the basis of aforesaid facts, and rightly so, that the total expenses incurred by the assessee were much higher, namely, ₹ 23,52,000/-, which was allowable as expenditure and, therefore, the aforesaid grant being 50% of the expenses incurred in obtaining ISO quality certification would qualify for exemption under Section 10A of the Act. Similar is the position in respect of other two claims which are dealt with by the ITAT in the following manner:-

> *"7. We have considered rival submissions. The assessee company, part of HCL Group of Company, incurred certain expenses on behalf of HCL Technologies Ltd. The same were reimbursed in the form of corporate charges. Similarly, the assessee was also reimbursed for the use of work stations belonging to the assessee for and on behalf of HCL Technologies Ltd. Thus, what is received by assessee is by way of reimbursement of expenses. This implies that such receipt will be given to reduce the expenses incurred. Since the expenses are debited to profit and loss account and while computing profits of eligible undertaking, profits were reduced to the extent of expenses. The amount received by way of reimbursement of expenses cannot be reduced from the profits of business of eligible industrial undertaking. The AO is, therefore, directed not to reduce the profits of business by the amount of ₹ 20 lacs received by way of corporate charges and ₹ 9,00,250/- received by way of reimbursement recovered for use of work stations. Accordingly, Ground Nos. 6, 9 & 10 are ruled in favour of*

4. Another issue relates to lease rent payment of ₹ 2,04,400/- to Noida authorities. The dispute was as to whether it is to be treated as revenue expenditure or capital expenditure. The assessing officer had disallowed the same treating it as capital expenditure. Reversing this decision, ITAT has allowed it as revenue expenditure in the following manner:-

> *"11. We have considered rival submissions. As rightly contended by counsel for the appellant, the amount paid is not for acquiring any leasehold right by way of annual lease rent. Thus, the amount is regarding payment for continuing to enjoy leasehold rights. In such situation, the assessee do not acquire any new capital asset but merely maintains capital asset already acquired. Thus, the expenditure assumes the character of revenue in nature and not capital expenditure. We accordingly hold that the expenditure being revenue in nature are allowable as such."*

5. We are, therefore, of the opinion that no substantial question of law arises. Dismissed.

A.K. SIKRI, J.

REVA KHETRAPAL, J.

SEPTEMBER 23, 2010
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