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

\+ **ITA 1129/2009**

DIRECTOR OF INCOME TAX, NEW DELHI ..... Appellant
Through: Mr. Sanjeev Sabharwal, Advocate

versus

AT KEARNEY LIMITED ..... Respondent
Through: Mr. Satyen Sethi and Mr. Arta Trana Panda, Advocates

\+ **ITA 1211/2009**

DIRECTOR OF INCOME TAX, NEW DELHI ..... Appellant
Through: Mr. Sanjeev Sabharwal, Advocate

versus

AT KEARNEY LIMITED ..... Respondent
Through: Mr. Satyen Sethi and Mr. Arta Trana Panda, Advocates

% DATE OF DECISION: September 13, 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. As many as seven questions of law are proposed in these appeals. However, they can be compartmentalized in three categories. By means

is that the Income-Tax Appellate Tribunal did not consider and adjudicated the specific ground raised by the revenue regarding deletion of the addition of ₹ 78,68,000/- (US $ 2,00,000/-) by the CIT(A) on account of estimation of income from services provided on global projections which was rendered by expatriate employees of the India branch. If specific ground was raised and pressed at the time of arguments but is not decided by the Tribunal in the main order, we are of the opinion that appropriate remedy for the revenue is to move an application under Section 254(2) of the Income-Tax Act. Other ground pertains to Section 80 of the Act. We find that the Assessing Officer had disallowed this claim on the ground that expenses were not claimed along with original return filed under Section 139(1) of the Act. The Tribunal, however, observed that as per the provisions of Section 80, in case of loss return, same can be allowed to be set off and carry forward only if the loss return was filed within the time allowed under Section 139(1). While framing the assessment, the A.O. could enhance the assessment or decline claim of certain expenses or assessee may claim the expenses related to the year under consideration and incurred for the purpose of, which not claimed in the original return. It was found that in the present case original return of loss was filed well within the time limit prescribed under Section 139(1) and, therefore, Assessing Officer could not have disallowed the claim on that basis. The Tribunal, in these

scrutiny assessment and to decide the same afresh as per the provisions of the Act. According to us, in these circumstances, no question of law arises. We clarify that it will be open to the Assessing Officer to consider as to the allowability of this claim in relation to carry forward losses on merits.

2. Second issue relates to Section 44C of the Income-Tax Act. This was the ground which the revenue sought to raise for the first time before the Tribunal in the following manner:-

> *"i) On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the disallowance of expenses without considering the admissibility and genuineness of the expenses debited to the P & L Account and without considering that the head office expenses (expatriate salary) are not admissible and amount allowable under Section 44C is nil in this case."*

3. The Tribunal was of the view that it was not possible to allow this additional ground because there was nothing on record that expatriate to whom salary was paid by the assessee employer was for managing the affairs outside India. The relevant portion reads as under:-

> *"We have considered the contention of Ld. A.R. and Ld. D.R. with regard to raising of this additional ground for the first time before the Tribunal. We found that Hon'ble Supreme Court even in the case of NTPC (**229 ITR 393**) observed that additional ground may be admitted, so long as the relevant facts are on record. However, in the present case, there is nothing on record that expatriate to whom salary was paid by the assessee employer was for managing the affair outside India. Even on merit, we found that the expenditure which is covered by Section 44C is the*

provision of Section 44C was not invoked by the revenue in the subsequent assessment years."

4. Since these provisions admittedly were not invoked by the Department in the subsequent assessment years, on this aspect also, no question of law arises.

5. We may point out that in para 2.5 issue regarding Section 44D read with Section 115A of the Income-Tax Act is also raised. However, Mr. Sabharwal could not point out as to whether any such issue was even raised before the Tribunal. Therefore, that also does not arise for consideration.

6. In these circumstances, we do not find any merit in these appeals, which are accordingly dismissed.

A.K. SIKRI, J.

REVA KHETRAPAL, J.

SEPTEMBER 13, 2010
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