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% 19.10.2010

Present: Ms. Prem Lata Bansal, Advocate for the Appellant.
Ms. Anita Sumanth with Ms. Surekha Raman, Advocates for the respondent.

+ITR No. 1165/2009

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By the impugned judgment dated 0.5.12.2008, the Tribunal had decided four appeals. In all four appeals one common question related to the foreign travel and conveyance expenses incurred by the respondent/assessee on the said travel of its employees. The Assessing Officer had disallowed the traveling and conveyance expenses to the extent of 25%. The CIT(A) had reduced the disallowance to 10%. However, the ITAT vide its impugned order allowed the entire expenses.

Other issue which is raised in this appeal relates to the provision of warranty . This was also one of the issues in ITA No. 486/2010. On that issue also judgment of the Tribunal has been affirmed holding that no question of law arises, more particularly when the Tribunal by deciding that issue had followed the judgment of this Court in **Commissioner of Income Tax vs. Vinitac Corporation Pvt. Ltd., ITR No. 278 P-337**. We may only note that the aforesaid judgment also stands affirmed by the Supreme Court in the case of **Rotork Controls India P.Ltd. v. Commissioner of Income Tax (2009) 314 ITR 62(SC)**.



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The only argument of learned counsel for the assessee is that no basis was shown by the assessee for making the provision. She points out that in the year 2000-2001, the provision of Rs. 2.60 crores was made whereas in the Assessment year in question i.e. Assessment Year 2001-2002 the provision made is of a lesser amount i.e. Rs. 1.75 crores during this year though the sales had increased.

We find from the order of the CIT as well as ITAT that the explanation given by the assessee was that this provision was made on the basis of past experience and other relevant consideration. The very fact that the provision for lesser amount is made in spite of the fact that as well as had indicates in this issue would itself demonstrate that there was a proper application of mind on the part of the assessee in making this provision. Merely on this ground, the Assessing Officer could not have disallowed the provision to the extent of 25% and thus the Income Tax Appellate Tribunal rightly allowed the entire provision towards warranty. We may also observe here that such provision has been made in preceding as well as subsequent Assessment Years and has been allowed in full by the Income Tax Appellate Tribunal and affirmed by this Court. Therefore, no question of law arises .

3rd question proposed in this appeal relates to the interest under Section 234B chargeable in respect of these Assessment years. It is not in dispute that Section 234B was inserted in the statute w.e.f. 01.06.2003. This Court in the case of **Director of Income Tax v. M/s.**



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Jacobs Civil Incorporated , ITA No. 491/2008 and other batch matters decided on 30.08.2010 has already taken the view that the aforesaid provision would be prospective and would not be applicable to the period prior to the Assessment Year 2004-2005. Therefore, no interest could be levied under the aforesaid provision in respect of Assessment Year in question, namely, 2001-2002.

This appeal is accordingly dismissed.

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A.K. SIKRI, J.

A handwritten signature in black ink, appearing to read 'Suresh Kait', located above the printed name.

SURESH KAIT, J.

OCTOBER 19, 2010
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