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

+ ITA 346/2010

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

versus

INDO RAMA SYNTHETICS (I) LTD. Respondent
Through: Mr. Ajay Vohra, Advocate with
Ms. Kavita Jha, Mr. Somnath Shukla
and Ms. Akansha Aggarwal,
Advocates.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

ORDER
06.10.2010

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Heard Mr. Sanjeev Sabharwal, learned counsel for the revenue and Mr. Ajay Vohra, learned counsel along with Ms. Kavita Jha, learned counsel for the respondent-assessee.

In this appeal preferred under Section 260A of the Income Tax Act, 1961 (for brevity, "Act") the following substantial questions of law are sought to be raised:-



1. Whether ITAT erred in deleting the amounts of Sales Tax subsidies calculated on sales made and received under package scheme of incentive 1993 by holding them to be capital and not revenue receipts?
2. Whether ITAT erred in allowing disallowances made for provisions for doubt full debts and on investments while calculating profits under Section 115JB by holding that the same were for diminution in the value of assets and hence not to be considered in terms of clause (c) of Explanation-I to Section 115JB?
3. Whether the aforesaid order of ITAT is correct decision in view of amendment to Section 115JB of the Act whereof clause (i) has been inserted in Explanation-I to the said section and has been made retrospectively applicable with effect from 01.04.2001?
4. Whether ITAT erred in allowing deduction under Section 80HHC while calculating MAT (Minimum Alternative Tax) under Section 115JB of the Act?
5. Whether ITAT erred in deleting interest charged under Section 234D of the Act by holding that the same was inserted with effect from 01.06.2003 and would be applicable to assessment years 2003-04 even though Assessment was completed subsequently?



It is fairly stated at the bar that as far as question No.1 is concerned, it is basically a matter whereby the Income Tax Appellate Tribunal (in short, "tribunal") has remanded the matter to the Assessing Officer.

It is not disputed that after remit, the Assessing Officer had proceeded and passed a fresh order against which the statutory appeal has been filed by the respondent-assessee.

In view of the aforesaid, the question No.1 does not survive.

As far as questions No.2 and 3 are concerned, the same are against the respondent-assessee in view of the amendment brought to under Section 115JA of the Act w.e.f. 01st April, 2001.

That apart, the controversy has been dealt with by this Court in *CIT Vs. ILPEA Paramount Ltd. 192 Taxman 65 (Del.)*.

As far as question No.4 is concerned, it is not disputed at the bar that the controversy is covered by the decision rendered in *CA No.7518/2010 Ajanta Pharma Vs. CIT* on 09th September, 2010 in favor of the respondent-assessee.

As far as question No.5 is concerned, the same is covered by



the decision rendered on 30th August, 2010 in *ITA 491/2008 (Director of Income Tax Vs. M/s. Mitsubishi Corporation Ltd.)*.

In view of the aforesaid, the appeal preferred by the revenue is allowed in part and the order of the tribunal is accordingly modified.

There shall be no order as to costs.


CHIEF JUSTICE


MANMOHAN, J

OCTOBER 06, 2010

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