



#16,18 to 20

30.9.2011

Present: Mr. N.P. Sahni, Sr. Standing Counsel for the Revenue.  
Ms. Kavita Jha, Advocate with Mr. Somnath Shukla, Advocate for the assessee.

**+ CM APPL. 10141/2011 IN ITA 778/2011**

\* For the reasons stated in this application, delay in re-filing the appeal is condoned, *in* moreso, when the appeal is filed in time in respect of other assessment years and on the same very issue raised in this appeal.

CM stands disposed of.

**ITA 778/2011**  
**ITA 1509/2010**  
**ITA 545/2011**  
**ITA 605/2011**

These four appeals pertaining to the same assessee involved four assessment years, though the questions raised are common. Lead case is ITA 778/2011 which is in respect of assessment year 2003-04 and the order passed by the Tribunal in this case has been followed in other three cases. For this reason, we would like to take note of the facts appearing in ITA 778/2011.

For this year, the respondent/assessee filed its return declaring income of Rs.11.87 crores. Assessment was framed after making certain additions at an income of Rs. 12.65



crores vide orders dated 31<sup>st</sup> March, 2006. Thereafter, the Commissioner of Income Tax issued notice dated 11th March, 2008 under Section 263 of the Act on the ground that the assessee had claimed project expenses of Rs. 19,39,452/- which was capital in nature. The Commissioner also stated in the said show cause notice that the assessee had claimed deduction of Rs.38,83,45,866/- under Section 10B of the Act which was wrongly allowed by the Assessing Officer. The assessee in reply to the said notice contended that project expenses were revenue in nature and in respect of second issue raised in the notice it was explained that there was no over-lapping of claims made under Section 80HHE and 10B of the Act. The Commissioner was, however, not convinced with the aforesaid plea of the assessee. Discussing the provisions of Section 80HHE (5) of the Act, the Commissioner observed that the assessee was not entitled to claim the benefit under Section 10B of the Act. She also observed that the project expenses were capital in nature with respect of these two issues and directed the Assessing Officer to decide these two aspects afresh, as per law, after giving opportunity to the assessee.

The assessee preferred appeal against this order passed by the Commissioner under Section 263 of the Act. The plea of the assessee before the Tribunal was that insofar as issue regarding deduction under Section 10B of the Act is concerned, it was debatable issue, moreso, when the assessee had claimed deduction under Section 80HHE of the Act in the earlier year as well and was allowed. This plea of the assessee has been accepted by the ITAT relying upon its own order in the case of *Legato System (P) Ltd. Vs. ITO*, 93 TTJ 828.



We may also record that the appeal of the Revenue in the case of *Legato Syst* (supra) was dismissed by this Court. We may also record that identical issue had arisen in ITA 1233/2007, ITA 160/2009 and ITA 507/2008 entitled *Commissioner of Income Tax Vs. Interra Software India Pvt. Ltd.* and this Court had dismissed those appeals of the Revenue upholding the order of the Tribunal. The Revenue had preferred SLPs thereagainst which have also been dismissed by the Supreme Court vide orders dated 23<sup>rd</sup> September, 2011. On the aforesaid ground, the order of the Tribunal on these aspects is without any blemish and needs no interference.

Insofar as expenditure incurred on the development of package software is concerned, the ITAT set aside the order of the Commissioner under Section 263 of the Act on this count as well holding that even this issue was debatable and, therefore, the order of the assessing Officer could not be said to be erroneous and prejudicial to the interest of the Revenue. After reading the order of the Tribunal on this issue, we are in agreement with the view taken by the Tribunal.

No question of law arises in these appeals which are accordingly dismissed.

  
A.K. SIKRI, J.

  
SIDDHARTH MRIDUL, J.

SEPTEMBER 30, 2011

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