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

+ ITA Nos. 133/2010 & 190/2010

COMMISSIONER OF INCOME TAX Appellant
Through Mr. Sanjeev Sabharwal, Sr.
Standing Counsel.

versus

NOKIA INDIA PVT LTD. Respondent
Through Mr. Salil Kapoor, Mr. Sanat
Kapoor, Mr. Ankit Gupta & Mr. Vikas Jain,
Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V.EASWAR

ORDER
02.11.2011

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These two appeals by the Revenue under Section 260A of the Income Tax Act, 1961 (Act, for short) are directed against the order of the tribunal dated 22nd May, 2009 in the case of the respondent-assessee-Nokia India Private Limited for assessment years 2000-01 and 2001-02. By the impugned order, penalty under Section 271(1)(c) of the Act has been deleted.

2. During the course of hearing, it is accepted at the Bar that penalty under Section 271(1)(c) of the Act was imposed on account of disallowance, which can be put in five categories, namely,



(i) foreign travel expenditure (ii) provision for warranty marketing expenditure (handset etc. issued to the dealers, AMSCs and employees) net of depreciation (iv) additions to closing stock (representing handsets issued to employees, AMSCs dealers and material lost in transit) and (v) provision for obsolescence.

3. With regard to the first two, (i) foreign travel expenses and (ii) provision for warranty, in the quantum proceedings, the ITAT had decided the issue in favour of the respondent-assessee and the appeal filed by the Revenue before this Court has been dismissed. Penalty proceedings under Section 271(1)(c) on these two accounts cannot be sustained.

4. With regard to the subject matter Nos. (iii) and (iv), i.e., marketing expenditure and additions to closing stock, the matter was remanded by the High Court to ITAT for a fresh decision. It now transpires that the ITAT has referred the matter to the Assessing Officer for fresh consideration vide order dated 22nd September, 2011. Therefore, on these two accounts, the penalty order under Section 271(1)(c) is rendered infructuous and we are not, therefore, inclined to entertain the appeal on the said grounds.

5. The Assessing Officer in the assessment year 2001-02 had



disallowed claim No. (v), provision for obsolescence, in quantum proceedings holding as under:-

“(4) Disallowance of 25% of the provision for obsolescence

In the P&L Account, the assessee debited Rs.49,46,656/- on account of provision for obsolescences of inventory, which represent 100% of the value of non moving inventory of spare parts. The A.O. asked the assessee to substantiate the same. However, only written arguments along with the list of such items were filed. In absence of any supporting evidences, the A.O. disallowed 25% of the obsolescences i.e. Rs.12,36,664/-. In appeal, the Ld. CIT(A) upheld the addition made by the A.O. on the ground that it is improbable that parts worth so much would have been lying without getting consumed.

In its written submissions, the assessee submitted that cellular handsets were not held with the intention to sell them in the ordinary course of business; therefore, the same were not included in the value of closing stock. It was submitted that merely because the explanation or contention of the assessee is not finally accepted by the CIT(A) in appellate proceedings does not form a conclusive ground for levy of penalty. Accordingly, it was prayed that penalty u/s 271(1)(c) be not imposed.

The arguments advanced by the appellant were examined. First of all, it is seen that the assessee neither before the A.O. at the time of assessment proceedings



nor before Ld. CIT(A) in appellate proceedings could substantiate its claim with corroborative or supporting evidences. Even in penalty proceedings, no new facts have been brought on record. Secondly, it is a well known fact that mobile technology is a fast changing technology and every year two or three new mobile models are launched by the assessee company. It is not there, that with launching of a new set, the old handsets are discarded by the consumer or the old sets were out of the market. The customers in the due course also purchase the old sets. Therefore, it could not be understood as to how obsolescences were generated in the assessee's business when even the old sets can easily be consumed in the market. It is, thus, proved that the assessee has deliberately furnished inaccurate particulars of its income by making provision for obsolescences of inventory in the books of account to the tune of Rs.12,36,664/-. Hence penalty u/s 271(1)(c) is leviable on this default."

6. It may be noted that in the next assessment year 2001-02, the total amount claimed by the assessee under the head "provision for obsolescence of inventory" was Rs.35,575/-. While the Assessing Officer disallowed the entire amount, the CIT(A) reduced the disallowance to 25% thereof, amounting to Rs.8,894/-. The said disallowance has been affirmed by the ITAT and the High Court.



7. The tribunal while dealing with the question of penalty under Section 271(1)(c) on the ground of obsolescence has held as under:-

“15.4 We have heard both the parties and have carefully gone through the orders of the authorities below.

15.5 It is not in dispute that disallowance has been made by the revenue only to the extent of 25% of the total claim on account of provision for obsolescences of inventory amounting to Rs.49,466,656/-. In other words, the A.O. has allowed 75% of the claim and disallowance only 25% thereof.

15.6 The A.O. has disallowed 25% of the claim on the ground that the old model could easily be sold in the market to the customers since the customers of this line also purchased old model even after launching new model in the market. This makes it clear that the assessee's claim has not been fully rejected. It is only on estimate that the A.O. has disallowed the 25% of the total claim. The A.O. has not given any such finding that the assessee's claim was otherwise a false claim, The addition made by the AO could at best be considered due to difference of opinion between the assessee and department but cannot be said to be a claim of such a nature which could be considered to be false and in respect of which the penalty u/s 271(1)(c) is to be levied. We, therefore, uphold the order of Id. CT(A) in deleting the penalty on this item also.”



8. Looking at the reasoning given by the ITAT, nature of disallowance and the finding of the Assessing Officer/CIT(A) making ad hoc disallowance of 25%, we do not think any substantial question of law arises in the present appeals and the same are accordingly dismissed.

9. It is clarified that dismissal of these appeals will not effect penalty proceedings, which may or may not be initiated by the Assessing Officer, pursuant to the order of remit passed by the ITAT. It is clarified that this Court has not expressed any opinion on the said aspect, including the contention of the assessee that no such proceedings should be initiated.

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SANJIV KHANNA, J.

A handwritten signature in black ink, appearing to read 'R.V. Easwar'.

R.V. EASWAR, J.

NOVEMBER 02, 2011
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