



#13 &amp; 14

% 27.01.2011

Present: Ms.P.L. Bansal, Advocate for the appellant.  
Mr.S. Krishnan, Advocate for the respondent.

**+ITAs No.73/2010 & 1717/2010**

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**(COMMON ORDER)**

In these two appeals, which pertain to assessment years 2004-2005 and 2005-2006, in the income tax returns filed by the assessee, it had claimed deductions under the provisions of Section 36(1)(ii) of the Income Tax Act on account of commission and bonus paid to its Managing Director in the capacity of an employee. The Assessing Officer disallowed the same on the ground that no evidence was furnished to show that he had rendered services for which commission was paid. CIT(A), however, allowed the deductions, which are sustained by the Income Tax Appellate Tribunal. Following facts are not in dispute.

- (i) The Managing Director was paid a sum of Rs.60.00 lakhs per year as an employee and the Assessing Officer had not disputed this payment made to him. This would clearly show that the status of Managing Director as an employee of the company was recognised. It can also safely be inferred therefrom that Assessing Officer accepted the position that he was rendering services as only then the



salary would be payable and would be accepted by the Assessing Officer.

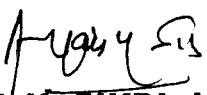
- (ii) As against payment of sum of Rs.60.00 lakhs per year to the Managing Director, the payment of commission and bonus is only Rs.8,31,148/- and Rs.5,34,501/- respectively in the assessment year 2004-2005 and Rs.11,01,189/- and Rs.5,35,501/- respectively in the assessment year 2005-2006.
- (iii) The respondent company had declared profits of Rs.2,20,99,810/- and Rs.2,65,28,061/- in these two assessment years on which tax in the sum of Rs.79,28,307/- and Rs.97,52,266/- respectively was paid. This will also demonstrate that the company had paid huge taxes and by making the aforesaid payment in the form of commission and profit bonus, attempt was not to divert the profits to the Managing Director.
- (iv) It was one of the terms and conditions of the employment, which was agreed upon beforehand, that the profit bonus would be paid at the rate of 5%. Thus, it was not a case where after the declaration of profits, a resolution was passed to give the profit bonus to the Managing Director.
- (v) The assessee company had been making these payments to the said Managing Director since 1997-98, which was



accepted till 2003-2004. It was only in the year 2004-2005 and 2005-2006 that a dispute was raised.

- (vi) The Income Tax Appellate Tribunal has also discussed the implication of deletion of the two provisos of Section 36(1)(ii) of the Act as per which ceiling on the payment of profit and bonus was done away with.

For all these reasons, we are of the opinion that no question of law arises. These appeals are accordingly dismissed.

  
**A.K. SIKRI, J.**

**JANUARY 27, 2011**  
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**M.L. MEHTA, J.**