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% 03.08.2011

Present: Mr. Abhishek Maratha, Sr. Standing Counsel for the appellant.

+ITAs 924/2011 & 925/2011

The Assessing Officer while carrying out the assessment pertaining to Assessment Year 2003-04 noticed that the assessee had given an advance of ₹8.59 crore to the two concerns namely (i) Hitz FM Radio Pvt. Ltd. and (ii) India FM Radio Pvt. Ltd and on this advance no interest had been charged by the assessee. There was an agreement between the assessee and the aforesaid two companies as per which the assessee was to utilize their airtime since the assessee is in the business of providing support services in media sector apart from giving engineering consultancy. The Assessing Officer looked into the agreements entered into between the assessee and the aforesaid two companies as per which the amount of the airtime proceeds mentioned was in the range of ₹2-3 crores to each of the parties. On this basis the Assessing Officer formed the opinion that the amount of ₹8.59 crore was much more than the terms stipulated in the agreement. The Assessing Officer held that the interest bearing funds have been advanced for the non-business purposes. The assessee had also paid interest on loans taken by it which was to the tune of ₹22,48,552/-. The

Assessing Officer disallowed the said interest paid on the aforesaid concerns namely substantial part of loans advanced were remitted to the aforesaid two companies. The order of the Assessing Officer was upheld by the CIT(A). However, no further appeal was preferred by the assessee before the Tribunal. The Tribunal had disallowed this addition.

A perusal of the order of the Tribunal would reflect that even when there were agreements between the parties, the Assessing Officer and CIT(A) ignored that after those agreements correspondence were exchanged between the assessee and the said two companies as per which the assessee had agreed to give enhanced amount. The text of two such letters was reproduced by the ITAT. Another finding of fact which is very material and is recorded by the Tribunal is that these two concerns are not related to the assessee but are mere clients of the assessee and the entire business of the assessee relates to the said two concerns. As a part of agreement, the assessee was making payment to them which was to be adjusted against sale of airtime and the enhanced amount paid by the assessee was stipulated by the aforementioned letter.

Obviously, the Assessing Officer and the CIT(A) ignored the subsequent terms agreed to between the parties which were the result of business exigencies and whereby the assessee and the

said two parties had novated the original terms regarding payment of advance whereby the assessee had agreed to pay the higher advance for maintaining healthy and robust business relationship with the said two partners. These are purely finding of facts.

The other addition made by the Assessing Officer was with regard to travelling and conveyance expenses incurred on various foreign consultants amounting to ₹11,92,781/-. The assessee had claimed that it had incurred travelling and conveyance expenses in the sum of ₹22,48,552/-. The Assessing Officer was of the opinion that some of the amount was spent on foreign consultants and this expenditure was not co-related with the business of the assessee. Here also, the CIT(A) disallowed this addition which is confirmed by the Tribunal. Relevant portion of the order of the CIT(A) had been reproduced by the Tribunal in its order. The finding of fact is related to the fact that it was made to hotel Taj Mahal, Kolkata on account of boarding and lodging charges of Mr. David Kelman and Shri Anand Raj. It is also a finding of fact mentioned by the Tribunal that Mr. David Kelman was deputed by parent company to visit Kolkata for the purpose of advising on the transmission and studio infrastructure facilities being set up by the two clients of the assessee and thus expenditure had been incurred wholly and exclusively for the purpose of business and was fully vouched. This

was again a finding of fact. No question of law arises. The appeal is hereby dismissed.

A.K. SIKRI, J.

M.L.MEHTA, J.

August 03, 2011
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