



% 24.08.2011

Present: Ms. Rashmi Chopra, Advocate for the Revenue.  
Mr. Ajay Vohra with Ms. Kavita Jha, Advocates for the Respondent.

**+ITA No.1300/2009**

Brief issues are raised in this appeal which relate to various accounts of additions made by the Assessing Officer. On 01.02.2011 when this appeal came up for hearing it was noticed that many issues had already been covered by the earlier judgments either in favour of the Assessee or the Revenue. In these circumstances the order was passed limiting this appeal to issues being (b), (e), (g), (i) and (j). The case was directed to be listed for preliminary hearing of these issues.

Insofar as issue (b) is concerned, the following question is proposed by the Revenue in this appeal:

- (a) Whether on the facts and in the circumstances of the case, the Ld. ITAT erred in deleting the expenditure of ₹ 19,90,12,151/- claimed as general and dealers discount?

In the income tax return filed by the assessee, the assessee had claimed that it had paid a sum of ₹ 19,31,73,982/- as discount to various parties. These discounts were further divided into three heads namely General Discount, Trade-in-Discount and Dealer Discount. The Assessing Officer disallowed 25% of the general discount and dealers discount i.e a



sum of ₹ 1,99,01,215/- on the ground that discount under these heads given by the assessee was over and above the policy adopted by the assessee. The assessee has explained that there was a discretion vested with the operation managers of the senior officers of the company to allow extra/additional discount over and above the policy adopted as per the business need of the company which explanation was not accepted by the Assessing Officer. The CIT appeal reversed the decision of the A.O. inter alia observing that the Assessing Officer had not given any basis for this crediting 25% of the discount pay. It was also held that the discretion was available with the senior officers of the company which was exercised by these officers and it was for the company to empower a senior officer with such a discretion. The Assessing Officer had neither doubted the genuineness of the discount actually given nor could it be pointed out that the discretion vested with the senior officer was misused for extra business consideration. The aforesaid order of the CIT(A) has been upheld by the ITAT and we do not find any perversity therein.

Issue (e) reads as under:

- (e) Whether on the facts and in the circumstances of the case, the Ld. ITAT erred in deleting the addition on account of commission of ₹ 2,58,94,168/- in the absence of any verifiable and justifiable evidence?



Learned counsel for the Revenue could not dispute that this issue already stands decided in favour of this very assessee vide judgment dated 11.5.2011 passed by this Court in **ITA No.206/08** in the case of **Commissioner of Income Tax v. Modi Xerox** pertaining to assessment year 1997-98.

Question of law in issue No.(g) as proposed by the Revenue reads as under:

- (g) Whether the LD. ITAT erred in law and on merits in deleting the addition of expenses written off amounting to ₹ 16,80,569/-?

The assessee had claimed that it had returned a sum of ₹ 15 lakhs given as advance to M/s Recus of Bangalore for development of a component likewise a sum of ₹ 1,31,569/- was returned all in respect of advances which were given to several parties. The Assessing Officer disallowed the aforesaid amount on the ground that insofar as advance given to Bangalore party is concerned, from the correspondence filed by the assessee it could not be said that the assessee had lost the said amount of ₹ 15 lakhs as the Agreement was still alive. Explanation of the assessee that the amount had become irrecoverable and it was decided to wipe off the same inasmuch as there was no possibility of recovery of this amount from the aforesaid Recus, Bangalore did not convince the Assessing Officer. However CAT(A) has found justification in the aforesaid explanation given by the assessee treating it as a business decision of the



assessee in not pursuing the recovery of the said amount. This decision the CAT (A) is again upheld by ITAT. We do not find any question of law in this aspect also which arises for consideration.

Proposed question (i) reads as under:

- (i) Whether the Ld. ITAT erred in law and on merits in holding the sale of scrap is to be included in the profits of business as well as total turnover for the purpose of deduction under section 80HHC of the Income Tax Act, 1961?

This question has already been decided by this Court order dated 13.05.2011 in **ITA No.167/2011** tilted as **CIT v. Sadhu forging**. Same is the decision in the case tilted as **Punjab Stainless Steel Ltd. 162 Taxman (9)**. No question of law arises in the circumstances. Admittedly such a lacking of interest income is admissible as per the judgment of this Court in **ITA No. 281/2005, Commissioner of Income Tax v.SRT**. The only contention raised by the learned counsel for the Revenue is that the interest given is allowed to be deducted only if it is a business income and it is argued that in the present case the Assessing Officer has not recorded any such finding. However reading of Assessment Order makes it clear that while computing the income of the assessee entire income under the head was taken as business income which will include interest income as well.



The result of the aforesaid discussion would be that no question of law arises for consideration in any of these aspects.

This appeal is accordingly dismissed.

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

  
**M.L. MEHTA, J.**

**AUGUST 24, 2011**

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