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% 28.07.2011

Present: Mr. Sanjeev Sabharwal, Advocate for the appellant.
Mr. Salil Kapoor and Mr. Sanat Kapoor, Advocates for the respondent.

+ITA No. 50/2010

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Notice in this appeal was issued on substantial questions of law proposed at page no. 2 in para 2.1 and 2.4 which read as under:

“2.1 Whether learned ITAT erred in deleting the addition on account of export commission and professional charges when no evidence for allowance was produced before the Assessing Officer and/or in appellate proceedings?

2.4 Whether learned ITAT erred in deleting the addition of Rs.91,145/- on account of claim of amortization of goodwill without appreciating that the same is not allowable in view of provisions of section 31(2) of the I.T. Act, 1961?

Insofar as first question is concerned, it may be noted that the assessee had claimed deduction on account of export commission paid in the sum of Rs.64,97,597/-. This was disallowed. The order of the assessing officer shows that reason for disallowing this commission was that the assessee was asked to provide details with regard to this commission vide questionnaire dated 19.01.2006 but it had failed to offer any explanation. The assessing officer thus concluded that in the absence of any explanation to substantiate the claim of expenditure, the same was unjustified and thus disallowed.

In the appeal filed by the assessee against this order, the assessee had argued that in the questionnaire dated 19.01.2006 no



such query was raised asking the assessee to substantiate the claim. In fact, in the said questionnaire the assessee was only asked as to why proceedings under Section 40(a) of the Act be not invoked and the claim disallowed on the ground that assessee had failed to deduct tax at source in the claim. The assessee had also argued that reply to the said questionnaire was given in view of the aforesaid limited nature of inquiry solicited by the assessing officer, referring to circular No. 786 dated 7.2.2006 by the CBDT as per which such claims were exempted from the deductions of tax at source when the payments were remitted directly abroad. The CITA accepted this plea and referring to the aforesaid circular of CBDT allowed the deductions.

It is the contention of the learned counsel for the revenue that in any case the claim was not substantiated and therefore unless there was some proof of payment of the export commission, it could not have been allowed. A perusal of the order of ITAT also shows that disallowance was limited to the liability of the said commission as deductions in the absence of tax deducted at source and referring to the same circular of CBDT confirmed the view of the CIT(A) that no such deduction of TDS was required for such payments. It is, thus, not clear as to whether the IT department had taken the plea that the assessee had not substantiated the claim of expenditure of export commission itself in the first instance. In these circumstances the only course of action open to the revenue was to move an application under Section 254(2) of the Act before the Tribunal. However, if such an

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application is moved within one month, the Tribunal shall decide the plea on its own merits.

We may categorically clarify that we have not expressed any opinion thereupon either.

Insofar as second question pertaining to depreciation of goodwill is concerned, we find that the assessee had acquired goodwill of purchase on revenue concerned and it was not self generated goodwill. On this ground it was treated as intangible assets and CIT(A) and ITAT held that the depreciation was allowable thereupon. The issue is covered in favour of the assessee by the judgment of this Court in **CIT Vs. Hindustan Coca Cola Beverages Pvt. Ltd.** decided on dated 14.01.2011.

Subject to the aforesaid, this appeal is otherwise dismissed.

Handwritten signature of A.K. Sikri in black ink, written in a cursive style.

A.K. SIKRI, J.

Handwritten signature of M.L. Mehta in black ink, written in a cursive style.

M.L. MEHTA, J.

JULY 28, 2011

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