



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

+ **ITA No. 359/2010**
ITA No. 361/2010

% Date of Decision: 10th May, 2011.

**COMMISSIONER OF INCOME TAX,
CENTRAL-I, NEW DELHI**

... APPELLANT

Through: Ms. Prem Lata Bansal,
Sr. Advocate with Mr. Deepak
Anand, Advocate.

Versus

SAHARA INDIA MASS COMMUNICATION

... DEFENDANT

Through: Mr. Percy J. Pardiwalla,
Sr. Advocate with Mr. Satyen
Sethi, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE M.L.MEHTA

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| 1. Whether the Reporters of local papers
may be allowed to see the judgment? | NO |
| 2. To be referred to Reporter or not? | NO |
| 3. Whether the judgment should be
reported in the Digest? | NO |



M.L.MEHTA, J. (Oral)

1. Both these appeals are directed against the order passed by the Income Tax Appellate Tribunal (hereinafter, in short referred to as 'ITAT') dated 29th May, 2009 whereby, the appeal of the assessee against the order of the Commissioner of Income Tax (Appellate) [hereinafter, in short referred to as 'CIT(A)'] was partly allowed.
2. The assessee filed return for the assessment year 1994-95 declaring loss at ₹15.24 crores. In the revised return, loss was declared at ₹19.35 crores. The Assessing Officer, however, made the assessment at a loss of ₹11.17 crores making various additions/disallowances including addition of ₹6541984/- on account of excess wastage of newspaper.
3. The appeal filed by the Revenue before CIT(A) against the order of the Assessing Officer came to be dismissed vide order dated 1st March, 2011. Before the CIT(A) an additional ground was also taken by the assessee regarding allowance of expenditure of ₹2,15,62,950/- which was not admitted by the CIT(A). Against this part of the order of the CIT(A) the assessee came in appeal before the Tribunal. Vide the impugned order, the Tribunal allowed the claim of the



assessee with regard to the wastage allowance as also the allowance in respect of expenditure of ₹21562950/-. It is against this order, that the revenue is in appeal before us.

4. We may note that in ITA No. 361/2010, the Revenue has taken as many as five grounds of appeal. Learned counsel appearing for the Revenue did not press the first four grounds and in this appeal confined to challenge the order of the Tribunal deleting the entire addition of ₹65,41,984/- made by the Assessing Officer on account of excessive wastage, though, the CIT(A) had restricted addition to ₹33,79,167/- on this account. In ITA No. 359/2010 in addition to the aforesaid five grounds, the challenge is also to the order of the Tribunal whereby he directed the Assessing Officer to allow the claim of the assessee relating to the expenditure of ₹2,15,62,950/- which the CIT(A) had not admitted as additional ground raised by the assessee in respect of the allowance of said expenditure. That being so, we are left with only two grounds of appeal in both the appeals which are as under:-

(e) Whether ITAT was correct in law in deleting the entire addition of Rs.65,41,984/- made by the AO on account of excessive wastage?



(f) Whether ITAT was correct in law in directing the AO to allow claim of assessee relating to expenditure of Rs.2,15,62,950/- in the year in which, such expenditure had been incurred?

5. The assessee had claimed a sum of ₹65,41,984/- on account of excessive wastage which according to the Assessing Officer was @ 11.25% of the total consumption of the relevant year. He relied upon the Registrar of Newspapers which allowed wastage @ 7% in respect of newspapers and 1% to 3% in respect of magazines. The Assessing Officer accordingly allowed wastage to the extent of 6% and thereby computed the excessive wastage valued at ₹65,41,984/-.
6. The CIT(A) did not agree with the mathematical reasoning given by the Assessing Officer. The CIT(A) held the wastage to be allowable by 7% and restricted the addition to ₹33,79,167/-. The Tribunal while allowing the entire claim of wastage, deleted the addition made by the Assessing Officer reasoning as under:-

“10.3 We have heard both the sides and gone through the elaborate records. As observed by the CIT(A) itself, the assessee has maintained quantitative records wherein full details of newsprint purchased and used are given. The assessee has also explained the reason for excessive wastage before the AO. The AO, however,



without rejecting the contentions of the assessee, relied on the report of the Registrar of Newspaper of India, called for by him u/s 133(6) of the Act. The CIT(A), though accepted that assessee had maintained quantitative records of wastage etc., applied the wastage rate of 7%. On the facts and circumstances of the case we accept the contention of the assessee that the Register of Newspaper of India is a authority, entrusted with the job of allotment of quota of foreign newsprint and the factors. Thus, in our considered opinion, the CIT(A) was not justified in disturbing the book results shown by the assessee. Thus, we allow the claim of the assessee on the issue in question and delete the disallowance sustained by the CIT(A).

7. Having considered the rival submissions of learned counsel for the parties and on perusal of the entire records, particularly, the orders of the authorities below we are of the considered view that the CIT(A) accepted that the assessee was maintaining quantitative records of wastage but he allowed the wastage @ 7%. We could not persuade ourselves to the reasoning given by the authorities below in respect of restricting the wastage to 6% or 7% when the assessee was able to demonstrate that the reasons of wastage were various and in such circumstances standard of 7% wastage rate prescribed by Registrar of Newspaper could not be applied. In fact, standard of 7% may be for the purpose of raising the demand of newsprint, but the amount of wastage would depend upon various factors including the location of office, printing units, godowns, etc. Otherwise also it is a clear finding



of fact and we do not see any perversity or illegality in the order of the Tribunal.

8. With regard to the additional ground of ₹2,15,62,950/- made by the assessee before the CIT(A) and which is allowed by the CIT(A), the ITAT passed the order in the following manner:-

“12. Ground nos. 13 to 16 in assessee’s appeal relates to the action of CIT(A) in not admitting additional ground in respect of allowance of expenditure of Rs.2,15,62,950/-. We have heard the parties. In the light of the Tribunal’s order dated 22-8-2008 in assessee’s own case in ITA nos. 47/Luc/2000 & 13/Luc/2000 for AY 1995-96, a copy of which has been placed on record, we accept the assessee’s contention and direct the AO to allow the claim of the assessee in the year in which the expenditure has been incurred. Since both the assessment years were stated to be pending, the CIT(A) in our view, was not correct in rejecting this additional ground. The CIT(A), it may be stated, in the latter year has admitted such additional ground and restored the matter to the file of AO which order has been confirmed by the Tribunal.

...

13.1 We have heard both sides and do not agree with the contention of the revenue that the CIT(A) has made any mistake in admitting the additional ground. The CIT(A) has only set aside the matter to the file of AO with the direction to verify the details. We see no reason to interfere.”

9. We may clarify that vide this impugned order, the Tribunal has maintained that the CIT(A) has remitted the matter to the



Assessing Officer. Both the learned counsels agreed to this clarification. There is nothing left to dwell on the issue.

10. In view of the above, both the appeals are dismissed.

M.L.MEHTA
(JUDGE)

A.K.SIKRI
(JUDGE)

MAY 10, 2010

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