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THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 19.05.2011

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ITR No. 13/1993

M/S. J.K. SYNTHETICS LTD.

..... APPELLANT

Vs

COMMISSIONER OF INCOME TAX

..... RESPONDENT

Advocates who appeared in this case:

For the Appellant : Mr. P.N. Monga & Mr. Manu Monga, Advocates
For the Respondent : Mr. N.P. Sahni & Mr. Rakesh Sinha, Advocates

CORAM :-**HON'BLE MR JUSTICE SANJAY KISHAN KAUL
HON'BLE MR JUSTICE RAJIV SHAKDHER**

1. Whether the Reporters of local papers may be allowed to see the judgment ?
2. To be referred to Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

SANJAY KISHAN KAUL, J (ORAL)

1. The captioned reference pertained to assessment year 1984-85. The reference is at the behest of the assessee. We have been called upon to adjudicate the following question of laws:

(i) Whether on the facts and in the circumstances of the case, the Ld. ITAT was legally justified in holding that only 50% of the total expenses of Kamla Retreat is admissible as revenue deduction?



(ii) *Whether on the facts and in the circumstances of the case, the Ld. Tribunal was right in law to hold that disallowance of depreciation on guest house building amounting to Rs 1,10,606/- was warranted and that the provisions of Section 37(4) have overriding effect over the provisions of Section 32 of the Act?*

(iii) *Whether on the facts and in the circumstances of the case, the Ld. Tribunal was legally justified in holding that the expenditure of Rs 21,950/- (Rs. 15000/-, Rs. 6,590/-) on feasibility reports of the projects which was finally abandoned was capital expenditure?*

(iv) *Whether on the facts and in the circumstances of the case, the Tribunal was legally justified in disallowing the retainership fee paid to two consultants amounting to Rs 1,52,000/- holding the same to be of capital nature?*

(v) *Whether on the facts and in the circumstances of the case, the Ld. Tribunal was legally justified in confirming the disallowance on travelling expenses amounting to Rs 10,974/- on the ground that it relates to new project and does not relate to existing business?*

(vi) *Whether on the facts and in the circumstances of the case, the Ld. Tribunal was legally justified in confirming the disallowance of foreign travelling expenses amounting to Rs 94,560/- incurred in connection with the mini Hydel plant and set up holding the same to be capital expenditure?*

(vii) *Whether on the facts and in the circumstances of the case, the Ld.*



Tribunal was legally justified in holding that two amounts of Rs 22,238/- and Rs 11,716/- out of foreign tour expenses to be capital nature?

(viii) Whether on the facts and in the circumstances of the case, the Ld. Tribunal was legally justified in holding that tour expenses to Kenya incurred on the employees of the company amounting to Rs 5,288/- do not qualify for weighted deduction under Section 35B of the Act?

(ix) Whether on the facts and in the circumstances of the case, the Ld. ITAT was legally justified in holding that interests of Rs 40,18,498/- payable on the provisional retention price received as per the hon'ble Delhi High Court's order is not admissible deduction?

(x) Whether on the facts and in the circumstances of the case, the Ld. ITAT was legally justified in holding that expenditure on samples (Rs 1,40,376), export market development expenses (Rs 23,081) and tour expenses to attend seminars & trades (Rs 27,757) are hit by the provisions of Section 37(3A)?

2. In so far as question no. (i) is concerned, a similar question of law was returned unanswered by this court while rendering its decision in ITR No. 138/1988. We are informed that the question in ITR 138/1988 was returned unanswered because of the amount being miniscule. We adopt the same methodology in the instant case as the amount involved is Rs 88,588/-. The question is returned unanswered. The result in effect is that the finding of the Tribunal will stand sustained. The question is answered against the assessee.

3. In so far as question nos. (ii) to (viii) & (x) are concerned the learned counsel for ITR 13/1993



the assessee says that in view of the amount being miniscule, he does not wish to _

the said questions. Accordingly, these questions are returned unanswered.

4. In so far as question no. (ix) is concerned, we have answered a similar question in ITR No. 368/1992. In the said ITR we have come to the conclusion that since the liability had not crystallised in the assessment year in issue, no deduction could be claimed by the assessee. Both parties agree that the same course of action be employed. Accordingly, we direct this question is decided in favour of the revenue for the assessment year in issue.

5. With the aforesaid observations the reference is disposed of.

SANJAY KISHAN KAUL,J

RAJIV SHAKDHER, J

MAY 19, 2011

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