



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

+ **ITA No.146 of 2011**

% Decision delivered on: 12th October, 2011

COMMISSIONER OF INCOME TAX – IV,
NEW DELHI

. . . APPELLANT

Through: Mr. N.P. Sahni, Sr. Standing
Counsel.

VERSUS

M/s. ESCORTS AUTOMOTIVES LTD.,
NEW DELHI

. . . RESPONDENT

Through: Mr. R.M. Mehta, Advocate.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE SIDDHARTHA MRIDUL

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, Acting Chief Justice (ORAL)

1. Admit.
2. The following substantial question of law which arises for consideration:

“Whether the Income Tax Appellate Tribunal was correct in law and on facts in deleting the addition/disallowance made by the AO in respect of business promotion expenses amounting to ₹27,19,769?”



3. The issue, thus, relates to the business promotion expenses purportedly incurred by the assessee in assessment year 2005-06. The assessee is a company and is engaged in the business of leasing, financing, trading in shares and debentures. The assessee company filed return of income declaring loss of ₹2,76,44,115/-. The case of the assessee-company was selected for scrutiny and notices under Sections 143(2) and 142(1) of the Income Tax Act (hereinafter referred to as 'the Act') were issued and served upon the assessee. In response to the said notices, the assessee has filed reply to the same. During the course of assessment proceedings, it was, *inter alia*, observed by the Assessing Officer (AO) that the assessee has claimed business promotion expenses of ₹27.19 lacs in respect of gift items distributed by it. The AO had made the addition on account of business promotion expenses as the assessee was not able to substantiate the same. On being enquired by the AO as to the genuineness of the huge amount which is expended on the so-called business promotion, the assessee stated that the expenses relate to the gift items for presentation. No details or explanation were provided as to what was the nature of gifts and how they related wholly



and exclusively to business purposes. Further, it was observed by the AO that the bills relating to business promotion expenses were not in the name of the assessee company.

4. The assessee filed appeal against the aforesaid order before the CIT(A) which partly allowed the appeal restricting the disallowance only to 10% to the total expenditure.
5. Against the order of the CIT (A), both the Revenue as well as the assessee filed the appeals. According to the Revenue, no such expenditure was allowable to be deducted, whereas the assessee wanted 100% deduction, as according to it, the entire expense was the business expense.
6. The Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal') has, however, maintained the order of the CIT (A). Though the assessee has not come up in further appeal, it is only the Revenue, who has filed the appeal challenging the order of the Tribunal. The reason given by the Tribunal is summarized in Para 3 of the impugned order, which is as follows:

“We have considered the rival contentions and found from the record that in view of the assessee’s business of leasing, financing and trading of shares, it used to give presents to its existing and potential clients which is customary in nature. Nothing specific was brought



on record by the lower authority to allege that the expenditure was not incurred for the purpose of business. During the year under consideration, the assessee has achieved a turnover of Rs.16.13 crores from its trading business and was having interest income of Rs.5.35 crores. Thus, the expenditure so incurred for promotion of business is to be allowed as business expenditure. Genuineness so incurred were not doubted. Keeping in view Assessing Officer's allegation that bills have not been properly maintained, we direct to restrict the disallowance to the extent of 10% of the expenditure. We direct accordingly."

7. After hearing the counsel for the parties, we are of the opinion that the Tribunal has not addressed the issue in a proper perspective. Only reason which has influenced the Tribunal is the high turnover of ₹16.13 Crores achieved by the assessee, who was also having interest income of ₹5.35 Crores, that, according to us, cannot be the ground to allow whatever expenditure is claimed by the assessee as business promotion expenses. It is the genuineness of the expenditure, which was to be gone into. Though the explanation of the assessee is that the expenditure was in the nature of gifts, which were purchased and related wholly and exclusive to business purpose, vital circumstance and important piece of evidence which is totally ignored by the Tribunal is that these purchases were not made in the name of company. All bills are in the name of one or two Directors of the company, therefore, what should have been examined



was as to whether these purchases made by a Director of the company, for which the bills were raised in the name of the said Director, were actually meant for the assessee and the gifts were utilized for promoting the business of the assessee alone. This aspect has not been dealt with by any of the Authorities.

8. We, thus, set aside the impugned order and remit the case back to the AO, who shall give an opportunity to the assessee to prove that the gifts which were purchased by the Director of the company in her name were, in fact, purchased for the assessee's business and were utilized by the assessee alone.
9. This appeal is disposed of in the aforesaid terms.

ACTING CHIEF JUSTICE

**(SIDDHARTH MRIDUL)
JUDGE**

OCTOBER 12, 2011

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