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

+ ITA 1840/2010, ITA 1846/2010

CIT

..... Appellant

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

versus

KL STEELS PVT LTD

..... Respondent

Through: Mr. Ajay Vohra, Ms. Kavita Jha,
Mr. Somnath Shukla and
Mr. Vijay Kumar Punna, Advs.**CORAM:****HON'BLE MR. JUSTICE SANJIV KHANNA****HON'BLE MR. JUSTICE R.V.EASWAR****ORDER****12.01.2012**

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These appeals have been preferred by the Revenue against the order of the Income Tax Appellate Tribunal dated 18.12.2009 which relate to assessment years 2005-06 and 2006-07. On 29.11.2010 while issuing notice the following order was passed by another Division Bench:

"CM No.20890/2010 in ITA No.1840/2010

Exemption is allowed, subject to just exceptions.
CM stands disposed of.

ITA Nos.1840, 1846/2010

In both these cases, the issue relates to payment of commission made by the assessee to its Managing Director, in addition to salary. The same was disallowed by the Assessing Officer on two grounds, viz.,



- a) No tax at source was deducted on amount; and
- b) It was not proved that the Managing Director has rendered services to earn such commission.

Insofar as second ground is concerned, the finding of fact recorded by the CIT(A) as well as the Income Tax Appellate Tribunal that the services were in fact rendered by the Managing Director as an employee. This being a finding of fact, which could not be disputed by the learned counsel for the appellant, he lays stress on the first ground on which the addition was made, viz., non-deduction of tax at source. His submission in this behalf is that even if it is treated as commission for brokerage, the tax was still to be deducted under Section 36(1)(i) read with Section 40A(ia) of the Act which fact according to him, is glossed over by the assessee.

Notice. Ms. Kativa Jha, learned counsel for the assessee accepts notice. Since the case is for narrow issue, we fix the same for final disposal on 16th December, 2010 in the category of 'After Notice Misc. Matters'."

2. In view of the aforesaid order we are only required to examine the question whether or not provisions of Section 40(a)(ia) of the Income Tax Act, 1961 are attracted and, therefore, the Tribunal was right in deleting the addition made by the Assessing Officer.
3. The respondent is a private limited company and one Raj Kumar Bardeja is their managing director. In addition to the fixed remuneration of about Rs.4 lakhs per year, Raj Kumar Bardeja is entitled to 6% of the net profits as commission. The aforesaid amount has been paid depending on the net profit earned by the respondent-assessee. In the assessment year 2005-06 and 2006-07 Rs. 41,98,000/- and Rs.90,60,000/- respectively, have been paid as commission. As



limited notice has been issued by order dated 29.11.2010 we have not examined the question whether or not the said amount should be disallowed under Section 40A (2) of the Act.

4. On the question of deduction of tax at source, the contention of the Revenue is that tax at source should have been deducted under Section 194H at the rate of 5% (it appears that w.e.f. 1.6.2007 the rate of tax has been increased to 10%). The respondent company had deducted TDS on the commission under the head "salaries" under Section 192 of the Act. The TDS deducted under Section 192 is at the normal rate which is much higher than either 5% or 10%. In these circumstances, we feel that the contention of the Revenue is hypertechnical. TDS has been deducted at a higher rate under Section 192 on the footing that the commission is part of "salaries". Thus the contention of the Revenue that Section 40(a)(ia) should have been applied does not have any merit and has to be rejected.

5. The appeals are accordingly dismissed.

SANJIV KHANNA, J.

R.V. EASWAR, J.

JANUARY 12, 2012

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