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

% Date of Decision : 3rd September, 2012.

+ ITA 98/2010
+ ITA 113/2010
+ ITA 143/2010

COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Suruchi Aggarwal, Sr. Standing
Counsel.

versus

SAMSUNG INDIA ELECTRONICS LTD. Respondent
Through: Mr. Satyen Sethi and Mr. Arta Trana
Panda, Advocates.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR

R.V.EASWAR, J: (OPEN COURT)

These are three appeals filed by the revenue under Section 260A of the Income Tax Act, 1961 ('Act', for short) and they relate to the assessment years 1996-97, 1997-98 and 1998-99. They are directed against the common order passed by the Income Tax Appellate Tribunal ('Tribunal', for short) on 28.11.2008 in cross appeals filed by the assessee and the revenue.

2. The assessee is a company dealing in consumer durables such as televisions, cameras, video recorders, washing machines, refrigerators, etc..

ITA 143/2010



3. In ITA 143/2010, the only substantial question of law is whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the assessee was entitled to the allowance for entertainment expenditure incurred on its employees. The assessee incurred deduction of ₹4,85,305/- as entertainment expenditure. It was claimed by the assessee that 35% of the aforesaid amount represented expenditure incurred on the food and beverage for the employees while they were entertaining the assessee's customers on behalf of the assessee. This amounted to ₹1,69,857/-. In calculating the allowance for entertainment expenses under Section 37(2) of the Act, the assessee deducted the allowance claimed in respect of the employees from the total entertainment expenditure incurred and applied the limits for deduction prescribed by the Section on the balance amount and calculated the disallowance on account of entertainment expenditure accordingly. The Assessing Officer, however, took the view that no allowance in respect of the entertainment expenditure incurred on the employees could be granted and accordingly reworked the disallowance at ₹2,37,653/- in the following manner :

Total Entertainment Expenditure (As per report)

₹4,85,305/-

Allowable u/s 37(2)

<i>First ₹10,000</i>	<i>100%</i>	<i>₹10,000/-</i>
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<i>Remaining ₹4,75,305/- @ 50%</i>	<i>₹2,37,652/-</i>	<i>₹2,47,652/-</i>
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<i>Entertainment Exp. Disallowable</i>	<i>₹2,37,653/-</i>
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The CIT(Appeals) having allowed the assessee's claim, the revenue preferred an appeal to the Tribunal which endorsed the decision of the CIT(Appeals).



4. A perusal of the order of the Tribunal shows that it has considered the claim of the assessee that 35% of the expenditure incurred on entertainment is attributable to the entertainment of the employees while they were entertaining the assessee's customers to be reasonable and therefore such portion of the expenditure has to be excluded at the threshold and the limits prescribed by Section 37(2) have to be applied only on the balance of expenditure. This is not an unreasonable view of the section. The question as to how much is to be attributed to the entertainment of the employees is a matter of esteem. We are, therefore, answer the question in the affirmative, in favour of the assessee and against the revenue.

ITA 113/2010

5. This relates to the assessment year 1997-98. The first question relates to the computation to the disallowance of entertainment expenses under Section 37(2). We have already answered a similar question in ITA 143/2010 in favour of the assessee. The controversy being the same, this question is decided in favour of the assessee and against the revenue.

6. The second question of law is whether the Tribunal was right in holding that the assessee is entitled to the depreciation on the increase in the cost of fixed assets due to fluctuation in the foreign exchange rate. During the relevant previous year, the liability to pay foreign exchange for the machinery purchased by the assessee went up by ₹35,699/- on account of adverse exchange rate fluctuations. Treating this amount as part of the cost of the assets, the assessee claimed depreciation of ₹4,462/- on the additional cost represented by the aforesaid law. The claim was rejected by the Assessing Officer on the ground



that mere increase in the law on account of adverse exchange rate fluctuations cannot be taken note of for the purpose of calculating depreciation and that the adjustment to the cost of the asset can be made only at the time of actual payment of the increased foreign exchange and not on notional basis. On appeal the CIT(Appeals) directed the Assessing Officer to allow the depreciation as claimed.

7. The revenue carried the matter in appeal before the Tribunal and accepted the decision of the CIT (Appeals) following the judgment of this Court in ***CIT Vs. Woodward Governor India P. Ltd.*** (2007) 294 ITR 451. In that judgment, it was held that the increase on account of fluctuations in the rate of foreign exchange prevailing on the last day of the financial year is not notional or contingent and has to be adjusted in the actual cost of assets in terms of Section 43A, in the year in which there is variation in the exchange rate, irrespective of the date on which it is paid.

8. This issue now stands concluded by the judgment of the Supreme Court in ***CIT vs. Woodward Governor India P. Ltd.*** (2009) 312 ITR 254 in which the judgment of this Court was affirmed. The question having been concluded by the judgment of the Supreme Court (supra) we answer the substantial question of law in favour of the assessee and against the revenue.

9. The next question of law is whether payment made by the assessee to the UP State Electricity Board (UPSEB) for laying electric transmission lines in the assessee's premises represents revenue expenditure or capital expenditure.

10. The amount paid by the assessee is ₹26,67,106/-. In the books of account the expenditure was shown as pre-operative expenses. The claim was



made by the assessee in the appeal filed before the CIT(Appeals) by way of an additional ground which was admitted and adjudicated upon. The CIT(Appeals) admitted the ground for adjudication and held, on merits, that the transaction lines were not owned by the assessee and the property in them remained with the UPSEB. This, according to the CIT (Appeals), was one of the conditions under which the UPSEB supplied power through the transmission lines. It was held by him following the judgment of the Supreme Court in ***Empire Jute Co. Ltd. Vs. CIT*** (1980) 124 ITR 1 that there was no enduring advantage to the assessee and that the payment represented expenditure in the revenue field and was deductible.

11. The revenue carried the matter in appeal before the Tribunal. The Tribunal, on the facts, held that the judgment of this Court in ***CIT Vs. Saw Pipes Ltd.*** (2000) 300 ITR 35 was applicable and accordingly agreed with the CIT(Appeals).

12. In our opinion, the question of law has to be answered in favour of the assessee in view of the judgment of this Court cited above. That was also a case where expenditure was incurred by the assessee for laying of electricity transmission lines, which did not become the property of the assessee. It was held that the expenditure did not bring in any enduring benefit and was deductible as revenue expenditure. Accordingly, the question of law is answered in favour of the assessee and against the revenue.

ITA 98/2012

13. This appeal relates to the assessment year 1998-99. The first question of law is whether the Tribunal was right in endorsing the decision of the



CIT(Appeals) deleting the addition of ₹1,20,88,657/- towards value of the closing stock. The facts relating to this question are briefly that in the profit and loss account the assessee had deducted the aforesaid amount from the value of the closing stock and declared only the net amount of ₹38,02,59,482 as the value. When asked to explain, the assessee submitted that it makes a provision for defective stock at the end of the year and this is divided into four types of stock namely, category sale, defective but not repairable, demo stock and write off for special value rates. It was also submitted that in the case of category sale, a provision of 35% on dealer price is made on the assumption that the sale price would only be 65%. In the case of defective but repairable stock, a provision is made on account of estimated repairable stock. In the case of demo stock it was written off in three years at 25%, 50% and 100% in the third year. In the fourth category fell VCDs, video recorders etc. which remained unsold for more than one year and these are written off in two years. They were accordingly, valued at 37.5% of the cost.

14. The Assessing Officer did not accept the assessee's explanation. According to him the assessee is a multinational having strong presence in more than 40 countries and it spends a fortune in establishing this brand name. Even granting the pace at which technology develops in the field of consumer durables it is not possible to accept the claim that the goods produced by the assessee become junk in a short period of a year or six months. The Assessing Officer also noted that the stock had not become defunct or unsalable and that there was no method to justify the reduction in the value of the stock as was done by the assessee. Accordingly, he refused to allow the provision for defective stock and added the amount of ₹1,20,88,654/-.



15. On an appeal the CIT(Appeals) allowed the assessee's claim as follows :

"I have considered the matter carefully. I have also seen the list of defective damages and other types of stocks which have been duly inspected and certified as also the price marked down by the concerned technicians for each item as per details submitted. This is not a case of creating provisions for defunct or defective stocks but actual reduction in value of stock due to reasons as certified by the company's experts. I, therefore, hold that the A.O. erred in his view that the reduced value of stock was on account of a provision for unascertained and contingent liability when on verification it is found that they are actual defective or damaged stock necessitating reduction in pricing. The addition therefore, is unjustified and accordingly deleted. (Relief ₹1,20,88,654/-)."

16. The revenue carried the matter in appeal before the Tribunal. The Tribunal confirmed the decision of the CIT(Appeals) in the following words :

"32. In the appeal filed by the revenue, ground has been taken for deleting addition of ₹1.20 crores made by the A.O. on account of reduction in value of closings stock of finished goods. We have considered the rival contentions and found from the record that since the starts of its operation in the assessment year 1996-97, the assessee company was consistently valuing the defective stock at the realizable value being lower then cost. Similar write down in the valuation of such stock was allowed by the department in the assessment year 1996-97 and 1997-98. However, during the year under consideration, by disturbing the method of valuation, the A.O. made addition. Jurisdictional High Court in case of CIT Vs. Bharat Commercial and industrial Ltd. (240 ITR 256), upheld the order of the tribunal alone claiming the loss arising out of valuation of slow moving raw material as estimated realizable value. Since the finding recorded by the CIT(A) has not been controverted by Ld. D.R., we, therefore, do not find any reason to interfere in the finding of CIT(A) for deleting the addition on



account of valuation of closing stock of finished goods in respect of its defective/obsolete stock.”

We have considered the facts and the submissions. The revenue has accepted similar claims in the assessment made for the assessment years 1996-97 and 1997-98. A consistent method of valuing the stock has been adopted by the assessee. It was also accepted by the revenue. It would, therefore, be improper to allow the revenue to change its position only for one year, which would upset the method of valuation of the stock for a particular year thereby resulting in a distorted version of the profits. The method of valuation of closing stock can be disturbed only if it is found that the method followed is such that true profits and gains cannot be deduced therefrom. These are basic principles in income tax law and need no repetition or citing of authority. In the case of ***CIT Vs. Bharat Commerce and Industries Ltd.*** (1999) 240 ITR 256 cited by the Tribunal the loss arising out of the reduced valuation of slow moving raw material on the basis of estimated realisable value was held allowable. We do not find any infirmity in the orders passed by the CIT(Appeals) and the Tribunal on this point, having regard to the method adopted by the assessee consistently. We accordingly answer the question of law in favour of the assessee and against the revenue.

17. The second question of law is whether the Tribunal was right in law in confirming the decision of the CIT(Appeals) deleting the disallowance of the brand building and dealer loyalty expenditure. In the books of account the assessee treated the expenditure of ₹6,93,81,635/- as deferred revenue expenditure. The expenditure consisted of ₹1.60 crores on brand building, ₹5.01 crore on dealer loyalty and ₹0.31 crores on others. The Assessing Officer



noted that the assessee had entered into an agreement with Samsung Electronics Company Ltd. of Korea, which is the parent company under which a part of the expenditure incurred for the benefit of the brand “Samsung” and therefore the expenditure cannot be said to be wholly and exclusively incurred for the purpose of the assessee’s business. He accordingly disallowed the entire expenditure of ₹6,93,81,635/-.

18. On appeal the CIT(Appeals) noted that there is no concept of deferred revenue expenditure in income tax law and that since the assessee was the exclusive dealer of Samsung products in India the entire benefit from the sales promotion and dealer loyalty would accrue exclusively to it and therefore the expenses were revenue in nature. Having said that, the CIT(Appeals) observed that since both the assessee and the appellant company in Korea benefited from the advertisements, 50% of the expenditure should be disallowed. He accordingly, allowed only 50% of the expenditure.

19. Both the assessee and the revenue filed cross appeals before the Tribunal, the assessee challenging the disallowance of 50% sustained by the CIT(Appeals) and the revenue challenging the relief of 50% granted by the CIT(Appeals). The Tribunal discussed the issue in paragraphs 26 to 29 and paragraph 35 of its order. The following are the findings of the Tribunal :

- a) the assessee, in addition to its activities in consumer durables, had its own manufacturing facilities;
- b) the expenditure was incurred to promote the brand and to increase its presence in the market so as to sell its entire production;



- c) in terms of the agreement with the parent company, the advertisement expenditure amounting to ₹13 crores was reimbursed by the parent company in Korea since part of the expenditure inured to the benefit of the parent company;
- d) due to the incurring of the expenses, the sales of the assessee had increased substantially as follows :

	June 99	Dec.99	Mar.00	Mar.01	Mar.02
Sales Qty.	41,254	60,644	54,542	56,779	76,386
Sales Value	53,70,40,746	74,18,78,271	66,16,91,561	77,29,82,225	88,31,12,779

- e) the reasonableness of the expenditure has to be seen from the point of view of the businessman and the mere fact that some part of the expenditure inured to the benefit of another entity does not entitle the income tax authorities to disallow a part of the expenditure.

In coming to the aforesaid conclusion the Tribunal relied on the following judgments :

- (i) ***CIT Vs. Walchand and Co. Private Ltd.*** (1967) 65 ITR 381
- (ii) ***CIT Vs. Dalmia Cement (B) Ltd.*** (2002) 254 ITR 377 (Del.)
- (iii) ***Sassoon J. David and Co. (P)Ltd. Vs. CIT*** (1979) 118 ITR 261 (SC)

On this basis the Tribunal allowed the assessee's appeal and dismissed the appeal filed by the revenue with the result that the entire expenditure of ₹6,93,81,635/- stood allowed.



20. We have considered the facts and the submissions. The finding of the Tribunal that a part of the advertisement expenditure is reimbursed by the parent company is not under challenge. This itself should settle the issue in favour of the assessee because even if it is assumed that a part of the expenditure incurred for the benefit of the parent company, the assessee is getting compensated for it. The view that in any case, expenditure, the benefit of which inures partly to the assessee and partly to another person, cannot be allowed as a deduction, we are afraid, is not the correct view to take in law since it has been settled by a long line of cases that expenditure incurred by the assessee in the running of his business cannot be disallowed merely on the ground that a part of the expenditure results in some benefit to a third party. The principle to be applied in such cases was articulated by Lord Atkinson in ***Usher's Wiltshire Brewery Ltd. Vs. Bruce*** (1914) 6 TC 399 (HL):

"I confess I am unable to see upon what principle money designedly spent by the brewer with the sole and exclusive object of maintaining this market place for his own goods, and promoting, through the action of the salesman, the sale of those goods therein, ceases to be an expenditure wholly and exclusively for his (the brewer's) trade because, incidentally, it may benefit the salesman."

Lord Sumner stated in the same case that the mere fact that to some extent the expenditure inures to the benefit of a third party cannot in law defeat the effect of the finding as to the whole and exclusive nature of the purpose. This principle was applied in India by the Supreme Court in ***Eastern Investment Ltd. Vs. CIT*** (1951) 20 ITR 1, ***CIT Vs. Royal Calcutta Turf Club*** (1961) 41 ITR 414 and ***CIT Vs. Chandulal Keshavlal and Co.*** (1960) 38 ITR 601. Having regard to the legal position adumbrated in the aforesaid cases we do not



find any error of law in the approach adopted by the Tribunal. Accordingly, the question of law is answered in favour of the assessee and against the revenue.

21. In the result, all the three appeals filed by the revenue are dismissed with no order as to costs.

R.V.EASWAR, J.

S. RAVINDRA BHAT, J.

SEPTEMBER 03, 2012

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