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

+ ITA 643/2012

CIT Appellant

Through : Ms. Anshul Sharma, for Sh. Abhishek
Maratha, Sr. Standing Counsel.

versus

CAPITAL FACTORS & ASSET RECONSTRUCTION

..... Respondent

Through : Nemo.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.V.EASWAR

ORDER
21.11.2012

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The Revenue in this case impugns an order of the Income Tax Appellate Tribunal (ITAT) dated 30.08.2011 in ITA 971/Del/2011. It urges that the Tribunal's order remitting the matter for reconsideration by the Assessing Officer is erroneous.

The assessee in the present case had filed its return for 2006-07; the same was taken-up for scrutiny. The major item of expenses was common personnel costs exceeding Rs.17.02 lakhs. It was contended that the expenses were incurred on behalf of the assessee by M/s. Escorts Finance Ltd. and that the details were being maintained by it. The Assessing Officer (AO) disallowed the claim. The assessee's appeal led to the deletion of the disallowance following a previous year's ruling. In the present case, however, the Tribunal noticed the facts and observed that the AO had proceeded pursuant to a previous remand and went on to state as follows:

"6. In the present year, assessee has claimed common personal cost at Rs.17,62,725. In paragraph 5 of the order of the ITAT extracted supra, we have noticed that assessee submitted before the Assessing Officer that



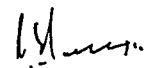
details in respect of salary expenses, namely, register, form No. 16 of all the employees were being maintained by Escorts Finance Ltd. These were produced before the Assessing Officer. We have specifically discussed the nature of evidence filed by the assessee from the books of Escorts Finance Ltd. before the Assessing Officer. Learned First Appellate Authority has deleted the disallowance after going through that evidence. In the present year except submitting that it has reimbursed the expenses, assessee failed to file any evidence. It submitted that M/s. Escorts Finance Ltd. no longer remained with the assessee and, therefore, it could not collect the details. Thus, it emerges out from the record that evidence could not produced by the assessee because of its separation from M/s. Escorts Finance Ltd. We find that there is a parity in the claim made by the assessee in assessment year 2003-04 as well as this assessment year. The only difference is that in assessment year 2003-04, assessee was able to produce the confirmation from M/s. Escorts Finance Ltd. as well as the evidence maintained by M/s. Escorts Finance Ltd. in support of incurrance of all these expenses. If assessee was not in a position to collect the evidence then to our mind Assessing Officer at least ought to have requisite the details from M/s. Escorts Finance Ltd. before making the disallowance. Considering the hardships of the assessee and the change in the circumstances, occurred on account of separation of business, we remit this issue to the file of the Assessing Officer for readjudication. The assessee shall first try to make efforts for submitting the requisite details in support of its claim. In case, it was not practically possible for the assessee to collect that evidence then it may request to the Assessing Officer for exercising his statutory powers for requisitioning that evidence from M/s. Escorts Finance Ltd. Before making such prayer, assessee shall specifically pin point the details of persons in whose possession such information is lying. It will not make any vague application before the Assessing Officer. It has to submit the specific particulars of the persons/entity along with address, with whom, in its understanding, the evidence in support of its claim is lying. Assessing Officer shall readjudicate the issue after providing due opportunity of hearing to the assessee and keeping in view the past history of the assessee in assessment year 2003-04. It is needless to say that the observations made by us will not impair or injure the case of AO or would cause any prejudice to the defence/explanation of the assessee.”

As can be noticed, the Tribunal was conscious of the details which were presented before it as well as the fact that for the assessment year 2003-04, the assessee had produced confirmations from the concerned companies in support of its claims. Therefore, having regard to all the circumstances, the remitting order was made. It was an unconditional remand, as borne out from the last sentence in the extract reproduced



above. The Court is, therefore, of the opinion that no substantial question of law arises.
The appeal is accordingly dismissed.


S. RAVINDRA BHAT, J


R.V.EASWAR, J

NOVEMBER 21, 2012
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