



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

+ **ITA NO.1232/2011**

% **Date of Decision : 28<sup>th</sup> November, 2011.**

CIT ..... Appellant  
Through Mr. Abhishek Maratha, sr. standing  
counsel with Ms. Anshul Sharma, Adv.

versus

ASPENTECH INDIA PVT LTD ..... Respondent  
Through None

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

**HON'BLE MR. JUSTICE R.V. EASWAR**

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

**SANJIV KHANNA,J: (ORAL)**

The present appeal under Section 260A of the Income Tax Act, 1961 (Act, for short) is directed against the order dated 21.4.2011 passed by the Income Tax Appellate Tribunal (tribunal, for short) in the case of Aspentech India Pvt. Ltd. (respondent-assessee). The assessment year involved is 2004-05.



2. The assessee had claimed commission expenses of Rs.61,27,865/-, which was disallowed by the Assessing Officer vide order dated 31.10.2006 on the ground that it was inadmissible expense under Section 43B of the Act for the year in question.

3. Subsequently, the assessee filed an application under Section 154 of the Act for rectification. It was pointed out that an amount of Rs.2,17,913/- out of the aforesaid amount of Rs.61,27,865/- was paid by the respondent-assessee to their employees on 31<sup>st</sup> July, 2003. It was further stated that payment voucher No.44 dated 31.7.2003 was already on record and available with the Assessing Officer but this fact was overlooked at the time of assessment. It was stated that an amount of Rs.18,48,772/- was paid to the employees on or before 31<sup>st</sup> October, 2004, which is the due date for filing of the return of tax for the assessment year 2004-05. The application further states that these details were available on record of the Assessing Officer, when he had passed the original assessment order. Thus, there was an error/mistake which was apparent and required rectification.

4. The Assessing Officer rejected the said application vide order dated



5.8.2008 without discussing the factual aspects and whether or not the said details/vouchers were already on record. He simply stated that contention of the assessee was not correct. Thus, the application was dismissed.

5. The CIT(Appeals) examined the said aspect and has recorded that the assessee had repeatedly filed rectification applications dated 14.12.2007, 15.1.2008, 25.2.2008 and 11.7.2008. He has referred to the ledger account of commission, which was filed before the Assessing Officer during the course of the original assessment proceedings. Observations and findings recorded by the CIT(Appeals), in this regard are as under :

“4) Even copy of the ledger account of commission of Rs.61,27,865/- shows that out of this a sum of Rs.2,17,913/- was paid within the Financial Year 2003-04 itself on 31.07.2003. Copy of the ledger account is enclosed at the page no.18 of the paper book filed on 02.04.2009 and copy of the payment voucher of Rs.8,86,291/- including the commission amount of Rs.2,17,913/- is enclosed at page no.16 of the paper book filed on 02.04.2009. Further payments amounting to Rs.18,48,772/- towards commission were made to employees of the assessee company on 21.05.04. and 22.07.04 i.e. well before the due date of filing of the return of income for the year A.Y.2004-05 which was 31.10.04 and hence, the payment of Rs.18,48,772/- in addition to payment of Rs.2,17,913/- mentioned earlier were allowable to Appellant Company u/s 43B of the Income Tax Act, 1961. Complete details of these



payments alongwith copies of payment vouchers and even copy of Standard Chartered Bank account statement of the Appellant Company wherein all these payments have been duly appearing under 'withdrawal column' are enclosed in the paper book filed on 02.04.2009 at page nos.33 to 50.

Complete details of commission payment of Rs.20,66,685/- made by The assessee company to its employees are once again given hereunder :

DATE	PARTICULARS	AMOUNT (Rs.)
31.07.2003	Commission Payment	2,17,913
21.05.2004	Payment to Naveen Kumar	15,118
21.05.2004	Payment to Ramamurthy Palepu	2,04,807
21.05.2004	Payment to Indranath Majumdar	66,371
21.05.2004	Payment to Mary Fernandes	75,811
21.05.2004	Payment to Alok Pandit	1,90,811
21.05.2004	Payment to Deepak Seth	2,03,2048
21.05.2004	Payment to Shailesh Sakarkar	1,32,457
21.05.2004	Payment to Hemchandra Bachal	1,51,623
22.07.2004	Payment to Naveen Kumar	32,494
22.07.2004	Payment to Indranath Majumdar	52,314
22.07.2004	Payment to Alok Pandit	3,83,220
22.07.2004	Payment to Deepak Seth	82,317
22.07.2004	Payment to Shailesh Sakarkar	1,13,742
22.07.2004	Payment to Ramamurthy Palepu	1,44,639
	TOTAL	20,66,685

5) All the aforesaid payment details for Commission of Rs.2,17,913/- and Rs.18,48,772/- paid by the Assessee Company to its employees before the due date of filing its return of income were intimated to the Assessing Officer vide letters dated 25.10.2006 (copy enclosed at page 17 and 18 of the paper book filed on 02.04.2009) and 30.10.2006 (copy enclosed



at page nos.85 to 114 of the paper book filed on 02.04.2009).

6) On payment of commission of Rs.2,17,913/- to employees during the Financial Year 2003-04 (i.e. Assessment Year 2004-05) and Rs.18,48,772/- to employees during the period 01.04.2004 to 31.10.2004 (i.e. Financial Year 2004-05 and Assessment Year 2005-06) the assessee company has deducted TDS under the head salary u/s 192 of Income Tax Act, 1961 and deposited the same in the Government Account. The statements of computation of taxable salary inclusive of these commission payments made to employees of the assessee company are enclosed at page nos.109 to 114 of the paper book filed on 02.04.2009.”

6. In view of the aforesaid factual position and after referring to the amendment made to Section 43B w.e.f. 1.4.2004, the appeal filed by the respondent-assessee has been allowed. The CIT(Appeals) also referred to circular 669 dated 25.10.1993 in which the Board has observed as under :

“2. The Board have reconsidered the matter and are of the opinion that where the sums referred to in the first proviso under section 43B had in fact been paid on or before the due dates mentioned therein, but the evidence therefore had been omitted to be furnished alongwith the return, the Assessing Officer can entertain applications under section 154 for rectification of the intimations under section 143(1)(a) or orders under section 143(3), as the case may be, and decide the same on merits.”

7. The tribunal in view of the findings recorded by the CIT(Appeals)



did not find any merit in the appeal preferred by the Revenue and has rightly dismissed the same by the impugned order.

8. Ld. counsel for the petitioner has submitted that in the original assessment proceedings vide order sheet dated 25.10.2006 the respondent assessee was required to explain why claim for commission of Rs.61,27,846/- should not be disallowed. The respondent-assessee vide letter dated 27.10.2006 had stated that the commission was claimed on accrual basis due to oversight and same was offered for taxation. The statement may have been made but it did not prevent the assessee from filing an application for rectification, if the ledger account of commission payment was on record and a factually wrong statement/concession had been made. The CIT(Appeals) has examined the said aspect in detail as is clear from his order, which has been quoted above. What is also apparent is that that respondent-assessee had to file four applications dated 14.12.2007, 15.1.2008, 25.2.2008 and 11.7.2008. The application dated 11.7.2008 was rejected on 5.8.2008 without giving reasons and by simply stating that the respondent-assessee was not correct. This is not the proper way of rejecting an application u/s 154 of the Act. The Assessing



Officer did not examine the records and state that the ledger account was not on record and no error/mistake was apparent. The Assessing Officer had not dealt with the circular issued by the Board, which has been referred to and quoted above and mentioned in the order of the CIT(Appeals). Even in the appeal the factual position that these details were furnished in the original assessment proceedings vide letters dated 25.10.2006 and 30.10.2006 is not specifically disputed.

9. Appeal is accordingly, dismissed.

**SANJIV KHANNA, J**

**R.V.EASWAR, J**

**NOVEMBER 28, 2011**

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