



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

+ **ITA NO.1233/2011**

% **Date of Decision : 28th 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 has been preferred by the Revenue against order of the tribunal dated 21.4.2011 in the case of Aspentech India Pvt. Ltd. The appeal relates to assessment year 2005-06.

2. In the immediately preceding assessment year i.e. 2004-05, the assessee had claimed expenditure towards commission of Rs.64,89,384/-.



The Assessing Officer disallowed the same relying upon Section 43B of the Act. In fact, the assessment order for the year 2004-05 dated 31.10.2006 records that the assessee vide order sheet dated 25.10.2006 was required to explain why commission of Rs.61,27,864/- should not be disallowed as it was not actually paid as required by Section 43B. The assessee in response vide letter dated 27.10.2006 had stated that the commission was wrongly claimed on accrual basis and same was offered for taxation in view of Section 43B of the Act. In view of the said order this amount of commission, which was disallowed as an expense for the assessment year 2004-05 was required to be accounted for and allowed as an expense u/s 43B in the assessment year 2005-06.

3. During the course of assessment proceedings for the assessment year 2005-06, it was noticed that the respondent-assessee had debited a Rs.38,14,019/- as commission expense. By another letter dated 24.9.2007, additional expense of Rs.64,89,384/- towards commission was claimed and a revised computation was filed. The Assessing Officer rejected and did not consider the additional claim of Rs.64,89,384/- as the assessee had not filed a revised return. The Assessing Officer relied on



Goetze (India) Limited Vs. Commissioner of Income Tax (2006) 284 ITR 323 (SC). (The amounts viz. Rs.61,27,864/- and Rs.64,89,384/- are different as it possibly includes after payments made before the date of filing of the return.)

4. CIT(Appeals) however, after examining the factual matrix, pointed out that the revised computation including additional claim was filed because of the requirement of Section 43B. It was further stated that on the commission paid to the employees up to the date of filing of return of TDS was also deducted. The CIT (Appeals) examined the said aspect in detail and considered the vouchers and copy of the bank account of the respondent-assessee. It was held that the commission expenses of Rs.84,54,631/- were lawfully allowable as a deduction. The aforesaid facts were confronted to the Assessing Officer and he was asked to submit a remand report. The Assessing Officer did not dispute the factual correctness of the assertion made by the assessee on merits but reiterated that the respondent-assessee should have filed a revised return as was held in the assessment order. The CIT(Appeals) allowed the appeal and held that the additional claim made by the respondent-assessee in the course of



assessment proceedings could have been taken into consideration and once it is held to be expenses had accrued in the previous year, i.e. 2004-05, but were allowable in the current year, the deduction should have been allowed.

5. The ITAT has agreed the reasoning given by the CIT(Appeals) and has relied upon the decision of this Court in *CIT Vs. Jai Parabolic Springs Ltd.* (2008) 306 ITR 42 (Del.). In the said case Delhi High Court has referred to the powers of the appellate forum and the decisions of the Supreme Court in *National Thermal Power Co. Ltd. Vs. Commissioner of Income Tax* (1998) 229 ITR 383 (SC), *Gedore Tools Pvt. Ltd. Vs. Commissioner of Income Tax* (1999) 238 ITR 268, *Jute Corporation of India Ltd. Vs. Commissioner of Income Tax* (1991) 187 ITR 688 (SC) and held that the appellate forum could have entertained and decided the said aspect. The decision in the case of *Goetze (India) Ltd.* (supra) is distinguishable. In the said case the assessee had filed the return of income for the Assessment Year 1995-96 on 30.11.1995. Thereafter, on 12.01.1998, the assessee wrote a letter to the Assessing Officer and made a new claim for a deduction, which was rejected by the Assessing Officer



as there is no provision to amend the return. The Supreme Court further clarified that the issue raised in *Goetze (India) Ltd.* (supra) was limited to the power of assessing authority and did not impinge on the power of the tribunal as was in the case of *National Thermal Power Ltd.* (supra). In the present case also the appellate forum had entertained the claim made by the respondent-assessee and allowed the same. There is no dispute that the claim/deduction towards the expense is otherwise correct and allowable.

6. We do not see any reason to entertain the present appeal. The same is accordingly dismissed.

SANJIV KHANNA, J

R.V.EASWAR, J

NOVEMBER 28, 2011

vld