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

\+ ITA 221/2010

THE COMMISSIONER
OF INCOME TAX ..... Appellant
Through Mr. Sanjeev Sabharwal, Senior Standing Counsel

versus

M/S. JINDAL SAW PIPES LTD. ..... Respondent
Through None

% Date of Decision: 6th September, 2010

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

MANMOHAN, J:

CM 3201/2010

Allowed, subject to all just exceptions.

ITA 221/2010

1. The present appeal has been filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "Act, 1961") challenging the order dated 7th November, 2008 passed by the Income Tax Appellate Tribunal (for brevity "Tribunal") in ITA No.

2587/Del/2006 for the Assessment Year 2003-04.

2. By way of present appeal, the following questions of law have been raised :-

i) *Whether ITAT/CIT(A) erred in directing the Assessing Officer (in short "AO") to allow the revised, claim of the assessee company for deduction under Section 10B?*

ii) Whether the ITAT erred in law in treating revised return filed by the assessee on 31st March, 2006 as valid, when the last date for filing of return as per the provisions of Section 139(5) 31st March, 2005?

iii) Whether the ITAT erred in accepting the change of method of accounting the financial charges from turn over base to capital investment base which has been regularly followed by the assessee.

iv) Whether the ITAT erred in law in deleting the addition of ₹ 47,84,365/- for infraction of law in paying sales commission on Government purchases under Explanation to Section 37(1) of the Income Tax Act, 1961?

3. Since the first two questions relate to jurisdiction of Commissioner of Income Tax (Appeals) [in short, "Commissioner"] to entertain revised claim of the assessee during appellate proceedings, we are dealing with both the questions simultaneously.

4. In our opinion, the authority of Commissioner is co-extensive with that of AO. Moreover, Section 250(5) of the Act, 1961 allows the assessee to raise an issue not even forming part of the grounds of appeal. In fact, the Supreme Court in ***National Thermal Power Co. Ltd. Vs. Commissioner of Income Tax, (1998) 299 ITR 383*** has held as under :-

> *"The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner of Income-tax (Appeals) takes too narrow a view of the powers of the Appellate Tribunal [vide, e.g., C.I.T, v. Anand Prasad : [1981] 128 ITR 388 (Delhi), C.I.T. v. Karamchand Premchand P. Ltd. : [1969] 74 ITR 254(Guj) and C.I.T. v. Cellulose Products of India Ltd. [1985] 151 ITR 499 (Guj). Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.*
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> *The reframed question, therefore, is answered in the affirmative, i.e., the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee."*

5. Consequently, in our opinion, the first two questions are conclusively settled against the revenue.

6. As far as the objection of the Department with regard to the change in method of distribution of common expenses is concerned, we are of the view that the Tribunal has given cogent reasons for rejecting the revenue's argument. The relevant portion of the Tribunal's order is reproduced hereinbelow :-

> *"We are of the view that once the new method by the assessee is found to be more scientific and appropriate, the bona fide of the assessee to adopt such a method cannot be doubted merely because the same is resulting into more benefits to it. Moreover, this entire issue had cropped up as a result of AO's refusal to allow the claim of the assessee company for netting of the interest income against interest expenditure and since the assessee company has finally given up the said claim of netting before the learned CIT(A) while adopting the new method of allocation of interest expenses incurred at HO level, we4 are of the view that there is no reason to doubt the bona*

> *fide of the assessee company in adopting the new method. As such, considering all the facts of the case, we hold that there is no infirmity in the impugned order of the learned CIT(A) allowing the revised claim of the assessee for higher deduction U/s 10B on the basis of new method of allocation of interest expenditure incurred at HO level to different units and upholding the same on this issue, we dismiss ground No. 2 of the Revenue's appeal."*

7. From the above, it is apparent that the assessee has in a bona fide manner adopted a more scientific basis for distribution of common expenses and accordingly, the revenue cannot raise a grievance on this score.

8. As far as the fourth question is concerned, we find that the Tribunal has followed its own decision in the case of the assessee itself for the assessment year 2002-03 in ITA No. 3879/Del/2005. It is pertinent to mention that even an appeal preferred by the Department against the said order has been dismissed by this Court in ITA No. 758/2009 on 4th August, 2009. The aforesaid order dated 4th August, 2009 is reproduced hereinbelow :-

> *"In our order dated 28.7.2009 we had recorded the statement of the counsel for the appellant that on second question of law ITA No.784/2007 has already been admitted. It is pointed out by learned counsel that there is a typing error and in fact the appeal which is admitted is ITA No.784/2005. However, it is not necessary to summon that file inasmuch as after going through the proposed second question of law as raised in this appeal and the orders passed by the ITAT, we find that it is a pure question of fact decided by the Tribunal since no question of law arise, this appeal is dismissed."*

9. Consequently, the present appeal, being bereft of merit, is dismissed in *limine*.

MANMOHAN, J

CHIEF JUSTICE

SEPTEMBER 06, 2010
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