



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

Decided on 06.07.2012

+ **ITA 389/2012**

CIT ..... Appellant  
Through : Sh. Deepak Chopra, Sr. Standing  
Counsel with Sh. Harpreet Singh Ajmani,  
Advocate.

versus

M/s. CREATIVE TRAVEL PVT. LTD. .... Respondent  
Through : Nemo.

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

**MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)**

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1. In this appeal, the revenue claims to be aggrieved by a decision of the Income Tax Appellate Tribunal dated 30-09-2011, disposing of the appeal against an order of the Appellate Commissioner.

2. During the assessment year, 2008-2009, the assessee filed a return claiming that it paid a commission of ₹72,25,179/- and an amount of ₹4,50,000/- as *ex gratia* amount, to its directors. The Assessing Officer, in the order framing assessment, disallowed these amounts and added them back to the taxable income by relying on section 36(1)(ii) of the Income Tax Act. The assessee's appeal to the Commissioner (Appeals) was allowed. The Commissioner (Appeals) noticed that for the previous assessment year 2005-



06, an identical disallowance of the commission and bonus amounts paid to the directors were directed to be deleted; the assessing officer had directed them to be added back.

3. The Tribunal in its impugned order confirmed the reasoning of the Appellate Commissioner and relied on the decision of this Court in ITA No. 1672/2010; that decision had rejected the revenue's appeal. This Court had reasoned as follows:

*“on the facts of this case, The Income Tax Appellate Tribunal has allowed the payment of bonus and commission to the Employee-Directors of the assessee company under Section 36(1)(ii) of the Income Tax Act and one of the reasons given by the tribunal, which is specifically weighed with its, is that in the past similar commission was paid to the working directors and it was never disallowed.*

*Mr. Aggarwal, learned counsel for the assessee has submitted that such a deduction is allowed under Section 36(1)(ii) of the Act for the past 30 years. In view of this, we are of the opinion that no question of law arises. This appeal is dismissed.”*

4. The revenue urges that there is a slight variation of facts, in the present case, since no dividend was paid out by the company to its shareholders, unlike the previous periods when substantial dividend was paid. It was contended that in such a situation, the disallowance made by the Assessing Officer was not unwarranted, having regard to the inference that could be drawn legitimately.

5. This Court has carefully considered the submissions of the revenue, and has also considered the reasoning of the Tribunal and the Appellate Commissioner. The order of the former is elaborate, and has taken into



account all the submissions of the parties, including the peculiar shareholding pattern of the assessee in this case. It is a closely-held family company which had, by resolution authorized payment of commission to working directors. The Tribunal also noticed that no commission was paid to some directors, which indicated that such category of amounts was not distributed to directors according to the company's shareholding pattern. Moreover, those who had received commission had a very small shareholding in the company. Therefore, the Tribunal found no reason to doubt that what was paid to these working directors was indeed commission, falling within the first part of Section 36 (1)(ii) of the Act which could be claimed by the assessee as such.

6. In view of the above discussion, this Court is satisfied that no substantial question of law arises for consideration. The appeal is therefore, rejected.

**S. RAVINDRA BHAT**  
**(JUDGE)**

**R.V.EASWAR**  
**(JUDGE)**

**JULY 6, 2012**