THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 06.05.2010

\+ **ITA 486/2010**

COMMISSIONER OF INCOME TAX … Appellant

- versus –

NOKIA INIDA P. LTD. ... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Prem Lata Bansal with Ms Anshul Sharma
For the Respondent : None

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE V.K. JAIN

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

BADAR DURREZ AHMED, J (ORAL)

1. The Revenue is in the appeal before us on two aspects.

2. The Assessing Officer had disallowed 25% of the foreign travel expense and had also made disallowance with regard to the claim in respect of the provision for warranty made by the Assessing Officer. The disallowance of 25 % was reduced to 10% by the Commissioner of Income Tax (Appeals) in respect of foreign travel expenditure. Ultimately, the Income Tax Appellate Tribunal deleted the entire disallowance. The Commissioner of Income Tax (Appeals) had also upheld the disallowance on account of the claim of provision made for warranty. The Income Tax Appellate Tribunal agreed with the assessee's contentions and deleted this

disallowance also.

3. The Income Tax Appellate Tribunal, by virtue of its order dated 05/12/2008 in respect of the assessing year 2000-01, i.e., the year in question, came to the conclusion that the assessee had established that the expenditure on foreign travel on employees was in the realm of the commercial expediency. This is also clearly evident from the facts and the learned counsel for the Revenue had not been able to point out any evidence on record to the contrary. She, however, submitted that the Commissioner of Income Tax (Appeals) had reduced the disallowance from 25 % to 10 % and had not deleted the entire disallowance in view of the fact that the entire duration of the stay of the field engineers of the assessee, who had gone abroad, could not be attributed entirely to business purposes. She drew our attention to the conclusion drawn by the Commissioner of Income Tax (Appeals) to explain the logic behind the decision of the said Commissioner of Income Tax (Appeals) to reduce the disallowance from 25 % to 10 %. The relevant observations made by the Commissioner of Income Tax (Appeals) are as under:-

> "Thus, I have to conclude that the AO was justified in disallowing a part of the foreign traveling expenses, but it appears, in view of the above explanations that disallowance of 25% was rather high. The main reason for holding as such is the fact that the AO has mainly focused o the long duration foreign trips, which are by and large undertaken by its filed engineers, by sending whom the appellant company has actually earned revenue in the form of service charges, which have been charged on per day basis at rates as high as US$ 600, as against the nominal salaries paid to

> out of the foreign traveling expenses appears to be reasonable, and addition to this extent is upheld. Appeal on this issue is therefore party allowed."

4. But, the very reason given by the Commissioner of Income Tax (Appeals) for reducing the disallowance from 25 % to 10 % is what goes in favour of the assessee. It is clear that the field engineers, who were sent abroad, were actually earning revenue for the company in the form of service charges and the company was earning as much as US $ 600 per day. The Commissioner of Income Tax (Appeals) thought this to be a ground for reducing the disallowance from 25 % to 10 % which, in the view of the Income Tax Appellate Tribunal, was ground enough for deleting the entire disallowance. Once the assessee company was receiving charges in respect of the field engineers, who had gone abroad, the travel expenses in respect of such field engineers could not have been disallowed. The Tribunal has correctly appreciated the law and arrived at the correct conclusion. There is no tangible evidence or material on record to suggest otherwise. Thus, in the absence of any perversity in the factual findings, we cannot interfere with the said findings of the Tribunal.

5. Insofar as the question of claim of provision for warranty is concerned, the Tribunal held as under:-

> "17. Apropos ground no.2, i.e provision for warranty, Ld. Counsel has demonstrated that effectively the expenditure subsequently incurred on meeting out warranty claim was more than the provision which is evident from the chart of 5 years. Respectfully following Hon'ble Delhi High Court judgment in the case of Vintec Corporation Pvt. Ltd. (supra), we hold that the assessee is

> provision for warranty. Ground no. 2 of the assessee is allowed.”

6. We see no reason to interfere with the aforesaid finding either. In any event, no question of law, what to speak of any substantial question of law, arises for our consideration.

The appeal is dismissed.

BADAR DURREZ AHMED, J

V.K. JAIN, J

MAY 06, 2010
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