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*IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **ITA 787/2014**

Date of decision: 22nd December, 2014

COMMISSIONER OF INCOME TAX-VI ..... Appellant
Through Ms. Suruchi Aggarwal, Sr. Standing Counsel with Mr. Amir Aziz and Mr. Shashank Menon, Advocates.

versus

TUPPERWARE INDIA PVT. LTD. ..... Respondent
Through Mr. Mayank Nagi, Advocate.

ITA 788/2014

COMMISSIONER OF INCOME TAX-VI ..... Appellant
Through Ms. Suruchi Aggarwal, Sr. Standing Counsel with Mr. Amir Aziz and Mr. Shashank Menon, Advocates.

versus

TUPPERWARE INDIA PVT. LTD. ..... Respondent
Through Mr. Mayank Nagi, Advocate.

ITA 791/2014

COMMISSIONER OF INCOME TAX-VI ..... Appellant
Through Ms. Suruchi Aggarwal, Sr. Standing Counsel with Mr. Amir Aziz and Mr. Shashank Menon, Advocates.

versus

TUPPERWARE INDIA PVT. LTD. ..... Respondent
Through Mr. Mayank Nagi, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J. (ORAL)

One common issue arises in these appeals by the Revenue whi pertain to assessment years 2006-07, 2007-08 and 2008-09. The Assessing Officer in these years made additions by disallowing the expenditure incurred by the respondent-assessee on plastic moulds on the ground that the said expenditure should have been claimed by Dart Manufacturing India Private Limited and Innosoft Technology Limited, who were the contract manufacturers for the assessee. The Assessing Officer primarily relied upon the order dated 10th November, 2006 passed by the Settlement Commission under the Central Excise Act, 1944, holding that the manufacturing cost would include the rent paid for the moulds and accordingly the excise duty would be chargeable. It is accepted and admitted that the order passed by the Settlement Commission related to the cost of excisable goods, which were manufactured.

2. Excise duty is leviable and collected as per the manner and method prescribed in the Central Excise Act, 1944. Section 4 of the said Act states that excise duty is chargeable on the excisable goods with reference to their value on removal of goods and on each removal of the goods, the value shall be computed as per the provisions of the said section.

3. We fail to understand how and in what context, the findings recorded by the Settlement Commission relating to valuation of good

for levy of excise duty would be relevant for adjudicating and deciding whether the rent paid for the moulds can be allowed as a deduction under Section 37(1) of the Income Tax Act, 1961 (Act, for short). The valuation of the excisable goods for the purpose of Section 4 of the Central Excise Act, 1944 has no connection or relation with the expenditure incurred by the respondent-assessee, which is allowable as expenditure under Section 37(1) of the Act.

4. The respondent-assessee is a subsidiary of Tupperware Asia Pacific Holding Pvt. Ltd., which holds 99% of the equity capital and Tupperware Home Parties Inc., USA, which holds remaining 1% of the share capital. The respondent-assessee had entered into agreements with Dart Manufacturing India Private Limited and Innosoft Technology Limited for manufacture of products to be sold under their brand name. The two manufacturers were paid consideration for the services rendered including the raw materials used by them.

5. The respondent-assessee had entered into agreements and had imported moulds on hire basis from overseas group companies. These moulds were given on 'free of cost' basis to Dart Manufacturing India Private Limited and Innosoft Technology Limited. The payment for the hire charges was made by the respondent-assessee to the overseas group entities. There is no dispute about the payments made by the respondent-assessee to the overseas group entities for hire of moulds.

The aforesaid international transactions were not made subject matt of any transfer pricing adjustments. These are undisputed and unchallenged facts.

6. Appropriate in this regard would be to reproduce the relevant portion of written submission filed by assessee before the Assessing Officer:-

> "The Company is engaged, inter-alia, in trading activities in respect of plastic kitchenware products since its set up of business. It purchases the products from the contract manufacturers (Dart Manufacturing India Private Limited and Innosoft Technologies Limited). The products manufactured have to meet the international quality standards and specifications established by Tupperware worldwide which require use of high quality and specific type of molds. Further, as the designs of the products are patented designs, the molds used for manufacture of such products are not available in the open market. Therefore, the Company has to import these molds from overseas group companies on hire basis and provide the same to the contract manufacturers to enable them to manufacture the products. Once the contract manufacturer completes the order placed by the Company the molds are returned back to the Company and there from to the mold owner(s), in case, the particular mold is no longer required for use in manufacture. In view of the above, the Company claims that the mold expenses incurred by it are wholly and exclusively incurred for the purpose of business and are therefore to be allowed as genuine business expenditure."

7. In view of the aforesaid factual position, it is difficult to understand the logic and reasoning of the Assessing Officer and the stand of the Department that hire charges paid for the moulds, which were used to manufacture the products sold by the respondent-assessee

after being manufactured at their behest and cost, should not be treat as expenditure under Section 37(1) of the Act.

8. For expenditure to be allowed as deduction, following conditions specified under section 37(1) are required to be met:-

(a) Expenditure should not be covered under section 30 to 36 of the Act;

(b) Expenditure should not be of capital or personal nature;

(c) Expenditure should laid out wholly and exclusively for the purposes of business;

(d) Expenditure should be incurred during the previous year;

(e) Expenditure should not be incurred for any purpose which is an offence or which is prohibited by the law.

"For the purpose of business" is a word of wide import and includes expenditure which a businessman incurs for business and commercial expediency. The question of reasonableness is not for the revenue to decide. Further, expression "wholly and exclusively" as observed by the Supreme Court in Sasson J. David and Co. (P) Ltd Vs. C.I.T [(1979) 118 ITR 261(SC)], does not mean "necessarily'. Even expenditure incurred voluntary and without any necessity, but for promoting business and earning profit is allowable.

9. Dart Manufacturing India Private Limited and Innosoft Technology Limited were merely contractual manufacturers. They

were to be paid for the services rendered as well as for the inputs/ra material used by them. They were given moulds free of cost by the respondent-assessee. For example, an assessee may purchase raw material and supply the same to the contract manufacturer. The valuation or cost of manufacture would include cost of raw material but it does not follow that the assessee cannot treat the price of the raw material as an expenditure. In case, the aforesaid two contract manufactures had paid hire charges for the moulds, it would have been resulted in increase in the purchase price in the hands of the respondent-assessee as held by the Tribunal. The first addition made by the Assessing Officer, therefore, cannot be sustained.

10. Reliance placed on Section 194C is also misconceived as the respondent-assessee had not charged any amount from Dart Manufacturing India Private Limited and Innosoft Technology Limited. In fact, Section 40(a)(ia) was not invoked and applied by the Assessing Officer. On hire charges paid to the overseas group companies, tax at source would have been deducted under Section 195 of the Act. It is not stated that tax at source had not been deducted.

11. The second issue raised by the Revenue pertains to assessment year 2007-08. The respondent-assessee had made provision of obsolete stock amounting to Rs.72,77,736/-. It was explained that there were obsolete and unsalable furnished goods, which formed part

of the closing stock. Similarly, there were bags and stickers whi could not be used as matching quantities were not available. The respondent-assessee had accordingly made a provision based upon the principle that closing stock has to be valued at cost price or market price, whichever is lower. The respondent-assessee has relied upon decision of the Supreme Court in ***Chainrup Sampat Ram versus CIT*** (1953) 24 ITR 481 (SC). The aforesaid principle is well recognised and accepted. However, valuation of the closing stock on the basis of market price, if lower, should have foundation and basis on how market price has been computed and not merely on *ipsi dixit*. The Assessing Officer has not gone into the said aspect but applied principle of matching to make the said addition. One cannot appreciate and understand how the principle of matching can apply, without examining the question whether the market price of obsolete and unsalable items was less than or lower than the manufacturing costs. If the market price of obsolete or unsaleable items is less than or lower than the cost price, the said position can be the basis for computing closing stock. It is noticeable that the respondent-assessee has been following this practise for several years and similar issue had arisen in the assessment year 2005-06, but the Revenue has not filed any appeal in respect of the said year. In fact, in the assessment year 2008-09, some of the obsolete items were sold and sale consideration received

has been duly accounted for. This fact has been noted by the Tribur in the impugned order. Thus, on the second issue, we see no reason to interfere.

The appeals are accordingly dismissed.

SANJIV KHANNA, J.

V. KAMESWAR RAO, J.

DECEMBER 22, 2014
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