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

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+ **ITA 195/2014**

COMMISSIONER OF INCOME TAX –II Appellant
Through: Mr Kamal Sawhney, Senior Standing
Counsel with Mr Raghvendra Singh, Junior Standing
Counsel.

versus

JCB INDIA LTD. Respondent
Through: Mr M. S. Syali, Senior Advocate with Mr
Mayank Nagi and Mr Tarun Singh, Advocates.

AND

5.

+ **ITA 202/2014**

COMMISSIONER OF INCOME TAX Appellant
Through: Mr Kamal Sawhney, Senior Standing
Counsel with Mr Raghvendra Singh, Junior Standing
Counsel.

versus

JCB INDIA LTD. Respondent
Through: Mr M. S. Syali, Senior Advocate with Mr
Mayank Nagi and Mr Tarun Singh, Advocates.

CORAM:
HON'BLE DR. JUSTICE S.MURALIDHAR
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
16.07.2015

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1. These appeals by the Revenue pertain to Assessment Year ('AY') 2007-08 (ITA No.202/2014) and AY 2008-09 (ITA No.195/2014) and arise of the common impugned order dated 18th September 2013 in ITA Nos. 95/Del/2012 and 6051/Del/2012 respectively of the Income Tax Appellate Tribunal

(‘ITAT’). The question answered by the ITAT in the said impugned order in favour of the Assessee was whether the addition made by the Assessing Officer (‘AO’) of the ‘development charges’ claimed by the Assessee to be revenue expenditure was justified. The case of the Revenue is that the said ‘development charges’ were in the nature of capital expenditure as the Assessee was thereby deriving benefit of an enduring nature.

2. In the impugned order, the ITAT has deleted the addition on the ground that in several previous AYs the plea of the Assessee that it was revenue expenditure was accepted.

3. Mr. Kamal Sawhney, learned Senior Standing counsel for the Department, submits that the Assessee gave no particulars of the development charges supposed to have been incurred by it in the relevant previous years and therefore failed to discharge the onus placed on it. He submitted that the rule of consistency would not apply where it can be shown that even the explanation offered by the Assessee in the previous years was not satisfactory. According to him, a wrong decision in the previous AYs will not preclude the Revenue from seeking remand of the matter to the AO for re-examining the issue afresh after giving the Assessee an opportunity to provide further details.

4. Mr. M.S. Syali, learned Senior counsel for the Assessee, first referred to the order dated 23rd February, 2004 passed by the ITAT in the Assessee’s own case for AY 1995-96 in which it was noted that for AY 1993-94 also the ITAT had upheld the order of the CIT (A) deleting the addition made by the AO of the development expenses. Consequently, the addition made of the said head of expenses for AY 1995-96 was also deleted. Mr. Syali also referred to a chart which showed that no disallowance of the development charges claimed as revenue expenditure was made from AYs 2001-02 to 2004-05 and AYs 2005-06

and 2006-07. Although, in relation to AY 2004-05, the issue was sought to be reopened by the Revenue, those proceedings ended in favour of the Assessee with the ITAT allowing the Assessee's appeal (ITA No. 3762/Del/2013) by an order dated 27th March, 2015. Mr. Syali further pointed out that for the subsequent AY 2009-10, the AO has accepted the explanation offered by the Assessee and allowed the development charges as revenue expenditure.

5. The consistent explanation that has been offered by the AO in the years in which development expenses/charges was allowed as revenue expenditure is that it is a nomenclature for 'routine expenditure for research and testing of equipment, components of the company on a year to year basis'. According to the Assessee, the expenditure under the said head, *inter alia*, includes expenses on:

“Testing the performance of local components (vendor and JCB India vis-a-vis similar components used in JCB machines outside India.

Component testing/research to improve performance, import substitution and monitor compliance with prescribed safety standards.

Testing of competitor machines/components to benchmark performance of JCB machines/components.”

6. It is seen that in the orders in assessment proceedings from which the present appeals arise, the AO did not hold that the details provided by the Assessee were inadequate. He only opined on the basis of the details furnished that there was a benefit of enduring nature to the Assessee thereby and that, therefore, it required to be treated as a capital expenditure.

7. When the matter went before the Dispute Resolution Panel (DRP), the hearing took place on 19th and 20th September, 2011. The DRP asked for further details from the Assessee which were furnished to it on 23rd September, 2011. In its verdict dated 26th September, 2011 the DRP opined the details furnished to be “cursory and vague” and therefore accepted the opinion of the AO that it was a capital expenditure. As rightly pointed out by Mr. Syali the DRP did not seek any clarification or explanation from the Assessee on the details provided. In other words, there is no basis for either the AO or the DRP to simply conclude that benefit of an enduring nature had been derived by the Assessee as a result of the expenditure on development charges.

8. The Court is satisfied with the explanation offered by the Assessee that it is incurring development charges on research and testing of components and that this does not result in a benefit to it of an enduring nature so as to characterise the development charges as capital expenditure. The Court is of the view that testing of products and components is essentially a continuous process which permeates different accounting years. It is an integral part of a routine manufacturing and monitoring activity. It cannot obviously be a one-time event.

9. The Revenue has not been able to persuade the Court that an error has been committed in any of the previous AYs where the Assessee’s explanation was accepted and the expenditure on development charges was treated as revenue expenditure. In the facts and circumstances of the case, the Court is additionally persuaded to adopt the rule of consistency as explained in ***Radhasoami Satsang v. CIT (1992) 193 ITR 321*** and decline the plea of the Revenue to remand the matter to the AO for a fresh determination.

10. No substantial question of law arises which requires examination.

11. The appeals are, accordingly, dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

JULY 16, 2015
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