* **HIGH COURT OF DELHI : NEW DELHI**

ITA No.798 /2007

% Judgment reserved on: 27th March, 2008

Judgment delivered on:7th April, 2008

Commissioner of Income Tax
Delhi-II,
New Delhi .....Appellant

Through: Mr. R.D. Jolly, Adv.

Vs.

M/s. Jai Parabolic Springs Ltd.
2, Park Lane, Kishan Gargh,
Behind D-3, Vasant Kunj,
New Delhi-11007011 ..... Respondent

Through: Mr. O.P. Sapra and
Mr. Sandeep Sapra,
Advs.

Coram:
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

V.B.Gupta, J.

The Revenue has filed this appeal under Section 260A of the Income Tax Act, 1961 (for short as 'Act') against the order dated 8th November, 2006 passed by the Income Tax Appellate Tribunal (for short as 'Tribunal'), Delhi Bench 'G' in ITA No.707/Del/2004 relevant for the assessment year 1990-91 vide which the appeal filed by the Revenue was dismissed.

2. The facts entailing the present appeal are that the assessee is engaged in the business of manufacture and marketing of springs and springs leaves required for the automobile industry. Return of income for the year under consideration was filed by the assessee on 30.12.90 declaring net loss at Rs. 4,40,36,000/-. Return was processed under section 143(1) of the Act. Subsequently, notice under section 143(2) of the Act

was issued. The loss under the normal provisions of the Act was computed at Rs. 4,27,63,353/- inter alia by making several additions/disallowances as enumerated in the order of assessment dated 19.03.93.

3. The Assessee has incurred Rs.19,48,125/- as expenditure on account of customer introduction charges which were debited as "Deferred Revenue Expenses" in the balance sheet. The expenditure was written off over a period of five years starting from the assessment year 1990-91 and accordingly, the assessee claimed reduction of Rs. 3,89,625/- in the return. The claim was allowed by the assessing Officer.

4. Being unsatisfied from the assessment framed, Assessee Company filed appeal before the Commissioner of Income Tax (Appeals) (for short as 'CIT [A]'). In the appeal before CIT (A), by way of

additional ground, Assessee claimed the entire deferred revenue expenses of Rs. 19,48,125/- in the assessment year in appeal. The CIT (A) allowed the appeal.

5. The Revenue preferred further appeal before Tribunal. The Tribunal, in terms of its order dated 14.05.03 restored the matter to the file of Assessing Officer to consider and decide the issue after examining the details.

6. Thereafter, the Assessing Officer took up the issue pursuant to the directions of the Tribunal and passed an order under section 254 read with section 143(3) of the Act on 31.01.03 and he disallowed the claim of Rs. 15,58,5000/- (i.e. Rs.19,48,125/- minus Rs. 3,89,625) with the following observations:

> "Since the claim for the deferred revenue expenditure of Rs. 15,58,500/- was not claimed by the assessee in its return of income for the assessment year 1990-91, the same is not allowed."

7. Being aggrieved from the above assessment, the Assessee preferred an appeal before CIT (A). Appeal of the Assessee was allowed by inter alia holding that the Assessing Officer erred in disallowing the expenditure on the sole ground that no claim for deduction of the amount was made in the return of income.

8. Aggrieved thereby, the Revenue filed appeal before Tribunal. The appeal of the Revenue was dismissed and the order of the CIT (A) was confirmed by the Tribunal.

9. Aggrieved by the order of the Tribunal, the Revenue filed the present appeal before this Court.

10. Thus, the principal question that arises for determination in this appeal is “Whether the Tribunal was right in law in allowing relief of Rs. 15,58,500/- in the assessment year under consideration when no such claim was made by the assessee in the return of income?”

11. It is contended by the learned counsel for the Revenue that Tribunal has erred both in law and on facts in granting relief of Rs.15,58,500/- to the Assessee on account of expenditure claimed by the Assessee as ‘Deferred Revenue Expenditure’ in the Audited Balance Sheet. As per the relevant statutory provisions no such claim can be allowed which has not been claimed in return of income. Further, particulars for the purpose of assessment have to be submitted before the completion of assessment proceedings and if the information is supplied subsequent to the

completion of the assessment, it would mean that the Assessment order will have to be reopened and the Act does not contemplate such reopening of assessment. Furthermore, in the absence of any direction given by the Tribunal in the first round of proceedings to allow the entire claim, the Tribunal failed to appreciate that out of the entire Deferred Revenue Expenses an amount of Rs.3,89,625/- has already been allowed by the Assessing Officer and the remaining expenditure was treated by the Assessing Officer in consonance with the proper manner laid down under the law.

12. As clear from the above said facts, there is no dispute that customer introduction charges did not represent revenue expenditure. The principal ground taken by the Revenue in this appeal is that if no claim for deduction of the amount was made in the return of income then deduction would not be allowed.

13. Section 254 of the Act says that the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

14. Reference may be made to ***National Thermal Power Co. Ltd.*** *v.* ***Commissioner of Income Tax [1998] 229 ITR 383 (SC),*** where the Supreme Court observed that:-

> "The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. We do not see any reason to restrict the power of the Tribunal under Section 254 only to decide the grounds which arise from the order of the Commissioner of Income-tax (Appeals). Both the assessees as well as the Department have a right to file an appeal/cross-objections before the

> Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier."

15. Refrence may also be made to ***Gedore Tools Pvt. Ltd. v. Commissioner of Income Tax (1999) 238 ITR 268,*** wherein the Apex Court decision in National Thermal Power Co. Ltd. (supra) has been followed.

16. In the case of ***Jute Corporation of India Ltd. v. Commissioner of Income Tax (1991) 187 ITR 688,*** while dealing with the powers of the Appellate Assistant Commissioner, the Supreme Court observed that:-

> "An appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any

> statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There is no good reason to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the Income-tax Officer. This Court further observed that there may be several factors justifying the raising of a new plea in an appeal and each case has to be considered on its own facts. The Appellate Assistant Commissioner must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The Appellate Assistant Commissioner should exercise his discretion in permitting or not permitting the assessee to raise an additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also."

17. In ***Goetze (India) Limited v. Commissioner of Income Tax (2006) 284 ITR 323 (SC)*** wherein

deduction claimed by way of a letter before Assessing Officer, was disallowed on the ground that there was no provision under the Act to make amendment in the return without filing a revised return. Appeal to the Supreme Court, as the decision was upheld by the Tribunal and the High Court, was dismissed making clear that the decision was limited to the power of assessing authority to entertain claim for deduction otherwise than by revised return, and did not impinge on the power of Tribunal.

18. Further, revenue expenditure which is incurred wholly and exclusively for the purpose of business must be allowed in its entirety in the year in which it is incurred. It cannot be spread over a number of years even if the assessee has written it off in his books over a period of years. [Reliance can be placed on ***Madras Industrial Investment Corporation Ltd. v.***

Commissioner of Income Tax (1997) 225 ITR 802 (SC)]

19. In view of the above discussion, it is very clear that there is no prohibition on the powers of the Tribunal to entertain an additional ground which according to the Tribunal arises in the matter and for the just decision of the case. Therefore, there is no infirmity in the order of the Tribunal.

20. Accordingly, the appeal of the Revenue is hereby dismissed.

V. B. GUPTA
(JUDGE)

MADAN B. LOKUR
(JUDGE)

April 07, 2008
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