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

Judgment Reserved On: 26.09.2011
% Judgment Pronounced On: 16.12.2011

\+ **ITA 1088 OF 2011**

COMMISSIONER OF INCOME TAX …APPELLANT
Through: Mr. N.P. Sahni, Advocate

VERSUS

M/S EXPEDITORS INTERNATIONAL (INDIA) PVT. LTD. …RESPONDENT
Through: Ms. Shashi M. Kapila, Mr. Sushil Kumar, Mr. Pravesh Sharma, Advs.

CORAM :-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

A.K. SIKRI, ACTING CHIEF JUSTICE:

The respondent-assessee, which is a private limited company incorporated under the Indian Companies Act, 1956, is into the business of supplying chain management, logistics and freight forwarding that is related to movement of goods and cargo within India or outside by road, rail, air or ship. This involves activities of packing, loading/unloading, trucking, tenderization, customs clearance and other cargo handling functions at both

ends, besides moving the goods by air or sea, where goods cross the international borders. The assessee is providing such services to its clients worldwide in conjunction with its counterpart affiliates spread in more than 100 countries.

2. To undertake these activities, the assessee company has arrangement with its parent company which is a foreign company for rendering global management services and VSAT uplinking enabling it to have global communication network. In the assessment year 2004-05, with which we are concerned, the assessee had filed its return disclosing an income of ₹6,03,65,640/-. During the assessment proceedings, the assessing officer observed that the assessee had paid to its parent company in USA a sum of ₹1,26,65,790/- on account of global management expenses, communication uplink charges and other expenses. Though the assessing officer did not dispute the genuineness of these expenses, but he chose to disallow these expenses on the ground that while remitting the aforesaid payment to its parent company, the assessee had failed to deduct tax at source ignoring the mandatory provisions of Section 40(a)(i) of the Income Tax Act, 1961 (hereinafter referred to as the Act). The assessing officer further observed that additions for identical reasons were made in the case of assessee in its earlier assessment years also. He accordingly disallowed the aforesaid expenditure and made addition in the income of the assessee in this regard. Aggrieved by the order of the assessing officer, the assessee filed appeal before the CIT(A) who allowed the appeal finding that additions made by the assessing officer pertaining to earlier assessment years had been deleted

and those orders were followed. Not accepting the order of CIT(A), revenue preferred appeal before the ITAT. The ITAT found that in respect of assessment years 2001-02 and 2003-04, similar appeal of the revenue had been dismissed holding that no such tax at source was deductible and the provisions of Section 40(a)(i) of the Act were not attracted. It was also found that in respect of those assessment orders, the revenue had preferred appeals before the High Court in the form of ITA Nos. 475/2009 and 751/2010 which were dismissed even by the High Court. Therefore, the Tribunal followed those orders and dismissed the appeal of the revenue even in respect of this assessment year.

3. The revenue has challenged the order of the Tribunal. Though it is accepted that earlier appeals of the revenue have been dismissed, present appeal is filed as orders of this Court dismissing the revenue's ITA Nos. 475/2009 and 751/2010 have been assailed by the revenue before the Supreme Court by filing SLP and since the matter is alive, in so far as revenue is concerned, that is the reason for preferring this appeal.

4. Mr. Sahni, learned counsel appearing for the revenue argued that what was paid was not only fee for technical services (FTS) but other charges as well on which tax at source was required to be deducted inasmuch as the expenses paid were under following heads:

Global Management Expenses	₹60,70,857/-
Communication Uplink Charges	₹34,16,279/-

Other expenses	₹31,78,654/-

	₹1,26,65,790/-

He submitted that cases relied upon by the Tribunal were under Section 194J of the Act whereas the present case falls under Section 195 of the Act. Therefore, it was the obligation of the assessee to deduct tax at source or even if there was any doubt, the assessee should have taken recourse to the provisions of Section 195(2) or Section 197 of the Act.

5. The aforesaid contention of the appellant was refuted by Ms. Kapila, learned counsel appearing for the assessee submitting that core issue was as to whether nature of expenses is such that it attracts the provisions of TDS. Her submission was that the payment raised was towards reimbursement of the expenses incurred by the parent company, namely, global management expenses and other expenses. When such payment was not chargeable to tax at all, the collecting machinery provision, whether Section 194J or Section 195, would not get triggered. According to her, there must be component of income chargeable to tax and only then the question of deduction of tax at source would arise in as much as tax at source is to be deducted on income and not on expenses. Global management expenses were reimbursement of cost and as per the decision in the case of ***Van Oord ACZ India (P) Ltd. v. CIT,*** *[2010] 323 ITR 130 (Delhi)*, tax was not deductible.

6. Prima facie, we find force in the argument of learned counsel for the assessee. In any case, this is the view already taken by this Court in the case

of this very assessee affirming the earlier decision of the Tribunal in ITA Nos.475/2009 and 751/2010 and we see no reason to deviate from the same. Therefore, in our opinion, no substantial question of law arises and the appeal is dismissed.

ACTING CHIEF JUSTICE

SIDDHARTH MRIDUL
(JUDGE)

DECEMBER 16, 2011
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