

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

ITA No.220 of 2007 (O&M)

Date of decision: 30.7.2009

Commissioner of Income Tax, Faridabad

-----Appellant

Vs.

M/s Porrits & Spencers (Asia) Limited, Faridabad.

-----Respondent

**CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MRS. JUSTICE DAYA CHAUDHARY**

Present:- Mr. Rajesh Katoch, Standing Counsel for the
revenue.

Mr. Santosh Aggarwal and Mr. A.C.Jain, Advocates
for the respondent-assessee.

Adarsh Kumar Goel,J.

1. This appeal has been preferred by the revenue under section 260-A of the Income Tax Act, 1961 (in short, 'the Act') against the order dated 31.8.2006 passed by the Income Tax Appellate Tribunal, Delhi Bench 'A' New Delhi in ITA No.3432/DEL/01, for the assessment year 1996-97, proposing to raise following substantial questions of law:-

“i) On the facts and circumstances of the case, whether the Hon’ble ITAT is right in dismissing the appeal of Revenue thereby deleting the disallowance made by the Assessing Officer regarding foreign tour expenses of Mrs. Tapedar w/o Shri K.C.Tapedar (MD), for which no evidence was furnished by the assessee to prove the nexus with the business activities?

ii) Without prejudice to ground No.(i) above, whether the Hon’ble ITAT was right in deleting the entire disallowance, whereby the Hon’ble ITAT has itself stated in the present order that the expenditure pertaining to travelling of wife was to be allowed to the extent of 50%?”

iii) Whether on the facts and circumstances of the case, the Hon’ble ITAT was right in confirming the order of the learned CIT(A), in which the disallowance of Rs.5,91,952/- made by the Assessing Officer on account of commission paid to Managing Director and the Executives was deleted?

iv) Whether on the facts and circumstances of the case, the Hon’ble ITAT was right in confirming the order of the learned CIT(A) in which the

disallowance of Rs.4,80,191/- made by the Assessing Officer on account of personal use of Car, was deleted?”

2. The Assessing Officer disallowed foreign tour expenses of wife of the Managing Director. The CIT(A) allowed the same but the Tribunal allowed the same to the extent of 50%. The Assessing Officer also disallowed the commission paid to the Managing Director and other executives. However, the CIT(A) and the Tribunal allowed the same. The Assessing Officer disallowed amount attributable to personal use of the car but the CIT(A) held that expenditure was not attributable to personal use.

3. Even though, notice has not been issued, Shri Santosh Aggarwal, representing the assessee has put in appearance and argued the matter. He points out that Question Nos.(iii) and (iv) are covered in favour of the assessee by orders of this Court dated 5.3.2009 in ITA No.38 of 2008 (**Commissioner of Income Tax, Faridabad v. M/s Porrits & Spencer (Asia) Limited, Faridabad**) and ITA No.540 of 2006 (**Commissioner of Income tax, Faridabad v. M/s Porrits & Spencer (Asia) Limited, Faridabad**), in the case

of the assessee, while Question No.(i) is a question of fact. It has been found that wife of the Managing Director had accompanied her husband partly for business purpose and for partly for personal purposes and in view of that finding, expenses to the extent of 50% have been allowed, which is consistent with the view taken by the Kerala High Court in **CIT v. Appollo Tyres**, (1999) 237 ITR 706 and Calcutta High Court in **CIT v. Indian Products Limited**, (1994) 207 ITR 647. However, as regards Question No.(ii), learned counsel for the assessee submits that there is an error in the order of the Tribunal in as much as if 50% expenditure of the wife was allowed, the order of the CIT(A) was required to be partly modified. The revenue has not sought any question on perversity of the finding of the Tribunal. This submission could not be rebutted on behalf of the revenue.

5. We are of the view that Question No.(i), (iii) and (iv) are questions of fact and are not substantial questions of law. The findings of the Tribunal on those issues are not liable to be interfered with. However, Question No.(ii) relates to perversity, there being conflict in the finding and operative part of the order of the Tribunal.

6. Accordingly, this appeal is partly allowed with regard to question No.(ii) and while the finding of the Tribunal that 50% of expenses of the wife are allowable, will stand, the order of the Tribunal to the extent it holds that the order of the CIT (A) was confirmed on that aspect, is set aside.

(Adarsh Kumar Goel)
Judge

July 30, 2009
'gs'

(Daya Chaudhary)
Judge