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Court : Income Tax Appellate Tribunal ITAT Kolkata

Decided On : Mar-30-2007

Judge : G Agrawal, Vice-, K P Rao

Appellant : Til Ltd.

Respondent : Asstt. Cit

Judgement :

1. This appeal is filed by the assessee having been aggrieved by the order of the Commissioner (Appeals) dated 23-11-2006 passed for the assessment year 2003-04 in the case of the assessee.

2. The assessee has raised the following issues in its grounds of appeal: (1) That on the facts and in the circumstances of the case, the learned Commissioner (Appeals) erred in having upheld the disallowance of whole of the dealership/agency commission of Rs. 190.99 lakhs paid to Md. Al Samarie of Baghdad, Iraq as inadmissible under Section 40(a)(i) on the alleged ground that there was absence of three basic parameters justifying payment of this amount for business.

(2) That the learned Commissioner (Appeals) failed to appreciate that the assessing officer did not dispute the genuineness of the expenditure but disallowed the same merely on the basis of extraneous report of assessee's name being appeared in a report, the contents of which were not disclosed to it or explained its relevance for such disallowance.

(3) That the learned Commissioner (Appeals) erred in having upheld the addition of Rs. 14,99,987, being tender money deposit written off alleging that pre-condition of write off has not been explained, in spite of the fact that as per generally accepted accounting standard there is no scope to account for tender deposit as income and the amount written off has to be viewed from the overall business perspective.

(4) That the learned Commissioner (Appeals) fell in error in upholding the addition of Rs. 8,00,000 being drawing & designing expenses paid to expert M/s. Marshall & Sons for remaining in the competitive market on the alleged ground of lack of agreement and nature of services rendered in spite of the fact that bill raised by that expert has been produced and the expenditure was essential for survival in the business field.³ Both the parties were heard regarding the issues raised by the assessee and its legal implications, with reference to the various documents made available by the assessee in the paper book filed before the Tribunal and admitted to have been filed before the Tax Authorities also.

4. During the course of the hearing, the learned Representative of the assessee has assailed the orders passed by the departmental authorities by adverting to various documents made available in the paper book filed by the assessee with reference to the issues raised in the appeal and corroborating the contention, while relying on various authorities applicable thereto and sought for setting aside the orders passed by the departmental authorities by allowing the issues raised by the assessee.

5. Contrary to this, the learned DR has submitted that the copy of the Volker Commission Report specifically mentioned the assessee's name alleging that the payments towards inland transportation fees or after sale service fees to Iraqi bank accounts are not authorized by the U.N. under oil for food programme and were reportedly in the nature of kick-backs. So, the departmental action in disallowing the various amounts claimed by the assessee is in pursuance of the Volker Commission Report as furnished by the Director General of Income-tax through the Chief Commissioner of Income-tax to the assessing officer.

Therefore, the learned D/R vehemently supported the orders passed by the departmental authorities and sought for upholding the same by dismissing the issues raised by the assessee.

6. On careful analysis of the orders passed by the departmental authorities in the light of the materials made available by the assessee in the paper book with reference to the issues raised in the grounds of appeal, it is found that the appellant company is engaged in the business of manufacture and sale of tractors and allied items.

For assessment year 2003-04, it filed its return of income along with Audited Accounts and also Tax Audit Report on 28-11-2003 at the figure of total income of Rs. 1,12,52,120. In the assessment made under Section 143(3), various additions were made. In the first appeal, most of the additions were confirmed, whereas partial relief was allowed on some ground. In the present appeal, the appellant assessee challenges the sustenance of the additions as done by the Commissioner (Appeals).

6.1 In Ground No. 1 in this appeal, the disallowance of Rs. 190.99 lakhs paid by the assessee to Md. Al Samarie of Baghdad, Iraq, a non-resident towards agency commission for export of Forklift Trucks in pursuance of Agency Agreement between the appellant and ISSAM Bureau Group of Companies, is being challenged. The facts of the case, as revealed by the orders of the lower authorities and also various papers and documents placed in the paper book filed by the appellant company are as follows. The appellant company had entered into a Dealership, Sales and Service Agreement with ISSAM Bureau Group of Companies incorporated in the Republic of Iraq. The said agreement was entered into with the above mentioned agent on being approached by that concern, after due negotiations with it for the purpose of procuring orders in Iraq. As per the said agreement, the aforesaid ISSAM Group was appointed as Dealer and Service Agents of the appellant company for Forklift Trucks manufactured by the appellant company. The scope of work to be performed by the agent was stipulated in the said agreement entered into with them, which has been perused by us. The appellant company subsequently exported flame proof Forklift Trucks to the

Ministry of Oil, Baghdad after taking necessary approval from the U.N. and paid a commission of Rs. 190.99 lakhs to the above mentioned agent for the procurement of the Sales Contract and for providing other services in regard to delivery and installation of the Forklifts. The said payment was made through banking channels viz. Bank of India as per RBI regulations after taking all the requisite permissions in terms of the agreement executed between the appellant and the Iraqi agent.

The payment was made to the agent's bank account maintained with Standard Chartered Grindlays bank Ltd. at Amman, Jordan.

6.2 The Assessing Officer disallowed the entire payment of abovementioned commission amount on the following grounds : (a) The name of the appellant company stood figured in the Volker Commission Report.

(b) The appellant is reported to have paid Inland Transportation fees or After Sale Services Fees (ASSF) to Iraqi bank accounts.

(c) The payment was not authorized by the U.N. and was reportedly in the nature of kick backs.

6.3. The Commissioner (Appeals) agreed with the views of the assessing officer and upheld the disallowance.

6.4 Representatives of both sides strongly argued their respective cases before us. While the appellant's representative relied on various materials placed in the paper book, the DR, on the other hand, mostly relied on the orders of the authorities below.

6.5 During the course of hearing of the appeal before us, the appellant's counsel strongly submitted in regard to the reasoning of the assessing officer that the appellant's name had figured in the Volker Report, that a copy of the said Volker Report had not been provided to the appellant and therefore, it could not have been used as evidence against the appellant in E making the disallowance. It was argued that the action of the assessing officer in using materials gathered behind the back of the appellant without giving the appellant an opportunity of rebutting

the same tantamount to denial of natural justice, to the appellant. It was further submitted that denial of natural justice in an assessment proceeding, renders the entire proceeding invalid. Reliance was placed on the following judgments in support of the above proposition : (1) *Kishinchand Chellaram v. CIT* (1980) 125 ITR 7131 (SC) holding that material collected behind the back of the assessee cannot be used without allowing him an opportunity to rebut the same.

(2) *Hirji Nagji & Co. v. CIT* holding similar view as above.

statement. recorded ex parte under Section 131 cannot be used against : assessee without providing an opportunity to him to place material, for rebutting the same. *Kiran Corpn. v. Asstt. CIT* (2006) 98 ITD 119 (Ahd.)(TM) holding like since the evidence collected at the back of the assessee was utilized by the assessing officer against the assessee without confronting it with such evidence, action of the assessing officer was violative of the principles of natural justice as well as the express provisions of Section 143(2).

6.6 During the course of the appellate proceedings before the Commissioner (Appeals) a remand report was called for from the assessing officer regarding reappearance of the name of the appellant in the Voiker Report. We find that in the said Remand Report, the assessing officer stated that the disallowance had been made on the basis of the Voiker Commission Report as published on the Website www.iic.offp.org. On being asked by the Commissioner (Appeals) to reply to the remand report, the appellant replied to the Commissioner (Appeals) by its submission letter dated 17-8-2006 that the website mentioned by the assessing officer did not contain the alleged Voiker Commission Report and that on the other hand, it contained certain information regarding various diseases only. Subsequently, the assessing officer was again asked by the Commissioner (Appeals) to substantiate his claim on the basis of disallowance in reply to which the assessing officer sent a fresh Remand Report dated 7-9-2006 wherein he altered his basis of disallowance and stated that the disallowance had been made on the basis of a letter received from the CCIT, Kol.-1, Kolkata wherein it was stated that the appellant's name had figured in the Voiker Report. The Commissioner (Appeals) accepted the said explanation offered by the assessing

officer and confirmed the disallowance.

6.7 On the basis of the above facts, it is clear that both the assessing officer as well as the Commissioner (Appeals) had placed blind reliance on the above mentioned letter issued by the CCIT, Kol.-I without making any attempt to verify independently the truth of the same. We also find that the above letter of the CCIT, Kol.-1 did not contain correct facts about the inclusion of the name of the appellant in the Voiker Commission Report. Furthermore, as far as our knowledge goes, the Voiker Commission Report, so far as the same is offending to the interests of India, is mainly concerned about doling out permits to various parties including some Indian parties as well to procure oil from Iraqi oil fields at controlled/subsidized rates and have no direct connection with supply of tractors and allied materials to have. Hence, in our view, there is no sound basis for connecting the appellants case to the Voiker Commission Report. It is also apparent that neither assessing officer nor the Commissioner (Appeals) had access to the said Volker Commission Report. Hence, this particular allegation about the appellant's name being mentioned in the Volker Commission Report cannot stand.

6.8 As regards the assessing officer's allegation that the appellant had paid Inland Transportation Fees or After Sale Services Fees (ASSF) to Iraqi bank accounts, the appellant has submitted and proved also that the entire payment was made through Standard Chartered Grincillays Bank Ltd., Amman, Jordan and not to any Iraqi bank Account.

Furthermore, as is evident from the agreement and copies of correspondences placed in the Paper Book, the payment was made for procuring the sales orders and for facilitating the installation of the Forklifts at the sites after they had been delivered to Iraq.

Therefore, it is clear that no payment was made for Inland Transportation Fees or After Sale Services Fees (ASSF) as alleged by the assessing officer. We are also of the opinion in this connection that even if the appellant company had paid Inland Transportation Fees or After Sale Services Fees (ASSF) to the agent, the said payments being of the nature of legitimate business expenses, that would

not have materially affected the claim of the appellant regarding allowability of the expenses concerned. Hence, this reasoning on the part of the departmental authorities on this issue also will not stand for legal scrutiny.

6.9 As regards the other allegation of the assessing officer that the payment was not authorized by the U.N. and was reportedly in the nature of kickbacks, the learned counsel for the appellant submitted that no authorization is required from the U.N. for making payment to a commission agent. The U.N. simply required that any sale of goods to Iraq should be authorized by it before any sale could take place. It has been pointed out that necessary approval was taken from the U.N. for the sales made by the appellant as already pointed out earlier. No permission was required from the U.N. for making payments to the commission agent and due permission, after providing all information regarding the purpose and reason, was taken from the RBI for making payment through proper banking channels. Regarding the other allegation of the assessing officer that the payment was in the form of kickbacks, it has been submitted that this allegation is based simply on surmises and also on the basis of the above mentioned letter received from the CCIT, Kol.-I without any attempt at verification of the truth. On proper appreciation of the facts in this case, we are inclined to be in agreement with the contentions of the appellant in this regard.

6.10 The appellant's counsel has, thereafter, argued that the only issue which may arise out of the entire matter is regarding the allowability of the commission paid on the facts of the case and whether any services were rendered by the aforesaid agent. In this regard, it has been submitted that the appellant company was able to make any sales to Iraq only because of the endeavours of the agent. Our attention has been drawn in this regard to the correspondences (copies placed in the paper book) between the appellant and Albatic Engineering & Scientific Technology, which is part of the ISSAM Bureau group of companies, regarding sale of Forklift Trucks to the Ministry of Oil, Iraq. The said correspondences clearly evidence that the sale made by the appellant to Ministry of Oil, Iraq was on account of the endeavours made by the said commission agent. Furthermore, the commission agent also provided services by facilitating the receipt of consignment at Iraq, delivery, installation and commissioning of the same at the place of installation. It

is also found from the papers filed in the paper book that once the installation had been completed by the agent, they sent to the appellant, Installation Reports duly filled up providing various details regarding the installation procedure. The agent also provided all help and technical support, in consultation with the appellant, which arose during installation and working of the Forklift Trucks exported.

6.11 On the basis of the above materials we are of the view that the commission paid is on account of services duly rendered by the commission agent and is therefore, fully allowable as a deduction in the computation of the appellant's total income.

6.12 The Commissioner (Appeals) has doubted the genuineness of the commission payment by stating that the commission is 23 per cent of the sales value and therefore is high and has also doubted the exigency of making such payment. The learned counsel for the appellant has argued in this connection that the observation of the Commissioner (Appeals) in this regard is simply based on suspicion and not on the knowledge of the exigencies of the commercial world. It has been submitted that payment of commission for various works and especially for procuring purchase orders is a very prevalent practice in the commercial world and that such commission payments are admissible deductions in the Income-tax assessments of the payer party. Reliance has been placed in this connection on the following judgments : when the addresses of the agents were furnished and the payments were through bank drafts and Account Payee cheques, the onus of establishing the claim of commission payment stood discharged by the assessee. *Vishnu Agencies (P.) Ltd. v. CIT* - Held that it is the duty of the authorities to consider oral as well as documentary evidences to determine whether payment was for business purpose.

3. *Jamshedpur Motor Accessories Stores v. CIT* Held that payment of commission on sale of Motor trucks to employee in addition to salary was allowable in view of commercial expediency.

Further held that about how much to be paid, assessee's view point has to be considered.

that payment of even secret commission without any documentary evidence is allowable on the facts and circumstances of the case. *V.I.P. Industries Ltd. v. Inspecting Assistant Commissioner* (1991) 36 ITD 70 (Bom.)(TM) holding that in present day business conditions, there need not be any demonstrable evidences of rendering of services by commission agents for procuring business on behalf of the principals, that business may be conducted even over telephone and that the results of business themselves are sufficient evidences of rendering of services.

(9) *Shree Kami (P.) Ltd.* (ITAT, Cal.), order dated 8-10-1999 in ITA No. 1143/Cal./1995 (Assessment year 1991-92).

(10). *WIPL Ltd.* (ITAT, Cal), order dated 7-9-2001 in IT Appeal No. 346 (Cal.) of 1995 (Assessment year 1985-86).

(11). *Dy. CIT v. Super Tannery (India) Ltd.* (2005) 274 ITR 338 (All.) hold in-that amount paid to commission agent to get money due from Government is deductible.

(12). *Khemka Instruments Ltd.* (ITAT, Cal), order in ITA No. 1078/Cal. 1999(A.Y. 1996-97), 2086/Cal./1991 (Assessment year 1997-98), 1075 Cal./1994, 2023/Cal./1991 (Assessment year 1987-83).

13. *Impex Meral & Ferro Alloys (P.) Ltd.*, order dated 13-7-2000 in ITA No. 1234/Cal./1999 (Assessment year 1996-97) (14) *Vinar System Ltd.* in ITAT No. 2412/Cal./1994 (Assessment year 1991-92).

(15.) *Akanksha International* (ITAT - Mumbai), order dated in ITA No. Mum. (2004) (Assessment year 2001 -02).

6.13 Lastly, the Commissioner (Appeals) has also confirmed the disallowance on the ground that no TDS was deducted by the appellant under Section 195 of the Income Tax Act, 1961 and therefore the payment of commission was even otherwise not allowable as per the provisions of Section 40(a)(i). In this regard, our attention has firstly been drawn to the provisions of Section 195, in accordance with which any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest or any other sum chargeable

under the provisions of this Act (not being income chargeable under the head "Salaries") shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force. It has been argued that tax is deductible on any payment made outside India on a sum which is chargeable to tax under the provisions of the Income Tax Act, 1961. In this connection, our attention has also been drawn to the provisions of Section 5(2) of the Income Tax Act, 1961, which provide that the total income of any previous year of a person who is a non-resident would include all income from whatever source derived which (a) is received or is deemed to be received in India in such year by or on behalf of such person; or (b) accrues or arises or is deemed to accrue or arise to him in India during such year.

6.14 Thereafter, it has been argued that in the case of a non-resident, an amount is chargeable to tax in India if the income is received or deemed to be received in India or the income accrues or is deemed to accrue in India. It has been pointed out that in the present case, the entire payment was received by the Iraqi Commission agent in Amman, Jordan and therefore, it cannot be said that the said amount was received or was deemed to have been received in India. As regards, accrual of the income in India, it has been argued that since the agent performed his entire activities from outside India, it cannot be said that the income had accrued in India.

6.15 Thereafter, the learned counsel for the appellant pointed out that the only aspect left to be considered was whether the income can be deemed to have accrued in India. For this purpose, reference was made to Section 9 of the Act and it was pointed out that the provisions applicable to the case of a non-resident commission agent were contained in Section 9(1)(i) Explanation 1(a), reading as below : (1) The following incomes shall be deemed to accrue or arise in India (i) all income accruing or arising, whether directly or indirectly through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset in India: (a) in the case of a business of which all the operations are not carried out in India, the income of the business deemed under this clause to

accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations carried out in India; 6.16 It was argued that accordingly only that part of the income from " operations as can be attributable to India shall be deemed to accrue in India. In this respect, it was submitted that as pointed out earlier the agency commission income did not accrue or arise to the agent in India. In this case payment was made for services rendered by him outside India. The commission agent had no business connection in India and neither did it have any permanent establishment in India. The entire services of the agent were rendered outside India and no part of the services was rendered in India. Therefore, it was finally argued that no part of the income of the non-resident agent can be said to have accrued or arisen in India or deemed to have accrued or arisen in India. This being the position the income of the non-resident, it has been argued, could not be treated as taxable in India as per the provisions of Section 5(2) of the Act. Again since the income of the commission agent was not taxable in India, the appellant was not required to deduct TDS as per the provisions of Section 195.

6.17 The learned counsel for the appellant summed up his arguments as under: (iv) It has neither any business connection nor any permanent establishment in India.

(v) Neither assessing officer nor Commissioner (Appeals) has given any finding regarding rendering of any services by the recipient in India.

6.18. In this respect, reference has also been made to the CBDT Circular No. 786, dated 7-2-2000 which has clarified that where income does not accrue or arise in India, no TDS is required to be deducted as per the provisions of Section 195.

6.19. In this connection, the learned counsel for the appellant has relied on the judgment of Delhi Tribunal in the case of Sheraton International Inc. v. Dy. CIT (2006) 9 SOT 595. In the aforementioned case, it has been held that firstly the chargeability of income has to be tested in terms of sections 4,5 and 9 of the Act and only then the other sections of the Income Tax Act, 1961 can be referred to. It has been contended that the ratio of this judgment clearly applies to the present case inasmuch as commission was paid to a non-resident outside India for

services rendered outside India and hence no income could be said to have accrued or arisen to the agent in India and therefore there was no requirement of deducting TDS under Section 195. It is argued that hence the Commissioner (Appeals) was not justified in confirming the disallowance on this account. It has been pointed out that the words 'other sum' appearing in Section 40 (a)(i) and Section 195 also put a pre-condition of being chargeable under the provisions of the Act as per clear language of these two sections.

6.20 On an appreciation of the facts and also the legal principles involved in this case, we are inclined to be in agreement with the arguments of the learned counsel for the appellant company. Firstly, we find that there are no clear evidences on record that the name of the appellant company found mention in the Volker Commission Report. There are also no evidences to show that the payment made by the appellant was of the nature of a kick-back. Nor would it have made any difference in the matter of allowability of the expenses concerned in the I.T.assessment of the payer had those facts also been correct. There may be legal bar in payment of kick-back in the matter of purchase of goods or articles by the Government of India or even any company under the control of the Government. No such restriction applies in the case of payment made by a private party for furthering its business interests.

There is nothing on record to show that the payment was made to any mafia group or to other for any illegal purpose or against public policy. The Volker Commission's Report mostly concerns politicians and others who are Public Servants in the eyes of law. It does not mention any illegality on the part of a private Indian party. Any bar imposed by UN on supply of goods to Iraq also cannot debar an Indian party to do so unless the restriction is imposed by the Government of India through a legal process. In the present case, there was no such restriction on supply of goods or materials to Iraq imposed by the Government of India. In any case, the records show that even these contingencies also did not arise in this case as neither the name of appellant company has been proved to have figured in the Volker Commission Report nor has the payment been proved to be of the nature of a kick-back nor even it has been shown that the necessary permission from UN was not taken. So far as the nature of the payment

is concerned, it has clearly been established that the payment was made purely for the purpose of procuring export order of Forklift Trucks to Iraq and also certain after-sales services performed by the Agent in Iraq and was of the nature of commission payment.

6.21 As discussed earlier the stand taken by the learned Commissioner (Appeals) that in absence of deduction of tax at source from the payment, it is hit by the provisions of Section 40(a)(i) of the Act, also is not tenable. There is nothing on record to show that any part of the activities of the Iraq; Agent was performed in India. The payment was also received by them in Jordan. Absence of any Permanent Establishment or Business connection of the Agent in India also takes the case out of the purview of the deeming provisions regarding accrual of income in India as envisaged in Section 5(2) of the Act. Hence, by taking into consideration all the aspects of the case, it is found that in this case, neither was the Commission payment received by the non-resident Agent in India nor did any income accrue or arise nor is deemed to accrue or arise to it in India. Hence, there was no liability on the part of the appellant company to deduct any tax from the amount of Commission payment made by it to the Iraqi Agent in terms of the provisions of Section 195 of the Act. It has also got to be held that looking to the complexities of international transactions, the rate of Commission payment in this case cannot be considered to be too high, excessive or unreasonable. In any case, there is nothing on record to show that the full amount as claimed by the appellant company was not actually paid or that some part of it was routed back to the appellant company or its Directors in an indirect or underhand way. Therefore, there is no case for disallowing the Commission payment in this case from any angle whatsoever. Taking into consideration all these aspects, we hold the Commission payment under consideration is fully allowable.

We therefore, reverse the orders of the lower authorities and delete the entire disallowance in this regard.

7. The ground No. 2 relates to the addition of Rs. 2,73,497 to the income of the appellant on account of difference found by the assessing officer in the sale transactions with M/s. Dewan Chand Ramsaran by seeking information from

Dewan Chand Ramsaran in terms of the provisions of Section 133(6). In this regard, it has been submitted that the said party is a regular customer of the assessee and the alleged difference might have arisen due to lack of reconciliation on account of various factors such as freight, taxes, etc. Settles invoices together with the books of account of the assessee are stated to have duly been produced before the assessing officer during assessment proceedings and the assessing officer also did not point out any defect or error therein. Furthermore, it has been pointed out that while the appellant follows Mercantile system of accounting, the said customer, on the other hand, follows Cash Basis of accounting.

8. On appreciation of all the aspects of the case, we are of the opinion that when the assessing officer allowed the appellant proper opportunity to explain the discrepancy between their figures and that of the other party, it was incumbent on the appellant to explain and reconcile the said discrepancy and that in the present case, the appellant has failed to provide such proper explanation and reconciliation. Therefore, we uphold the addition. Hence, the ground No. 2 raised by the assessee is dismissed.

9. Ground No. 3 relates to disallowance of Rs. 14,99,987 on account of various tender deposits totalling to Rs. 14,99,987 written off by the appellant. The main reason for making this disallowance was that this p amount had not been offered as income in earlier years. It has been argued that both the assessing officer as well as the Commissioner (Appeals) were under the impression that sundry debtors had been written off and that the amount had been claimed as a bad debt as per the provisions of Section 36(2). It is contended that the appellant had not made the said claim under the provisions of Section 36(2) but on the other hand, had claimed it as a deduction under Section 37(1) being losses incidental to business. It has the claim of the appellant is that in the course of business, the applicant. is required to make payments as tender deposits for procuring business by way of tender and that the said deposits are adjusted against the final bills, In some cases, the deposits are neither adjusted nor refunded. Details of the amount in this regard claimed as expenses incidental to business as placed in the paper book have been perused by us. It is found that in the relevant year, small amounts of tender deposits were written off as these amounts had become irrecoverable

and the expected cost of recovery would have exceeded the amounts recoverable. The appellant claimed the amount written off as loss incidental to business. In this regard, reliance has been placed by the Id. Counsel for the assessee on the following decisions :Commonwealth Trust (India) Ltd. v. CIT holding that if there is a direct and proximate nexus between the business operation and the loss or it is incidental to it, then the loss is deductible as without the business operation and doing all that is incidental to it, no profit can be earned.Addl CIT v. B.M.S. (P.) Ltd. 10. Taking into consideration the facts of the case and also the legal position involved, we are of the view that the said amount is allowable as a deduction under Section 37(1) of the Act by way of expenses/loss incidental to business on account of the fact that the said amounts had been paid as deposits to procure sales order and therefore had beer; incurred in the course of carrying on the business of the appellant. In that view, therefore, we are inclined to allow the claim of the appellant in this regard and thus, delete the disallowance.

11. Ground No. 4, being the last effective ground relates to the disallowance of Rs. 8,00,000 paid by the assessee to M/s. Marshall & Sons by treating the same as capital expense. The said expenditure is stated to have been incurred by the appellant lor drawing and designs and for various softwares on drawing and design like cad computer aided design for its equipments. It has been argued that in the absence of expertise, the appellant company had to take help from experts outside its organization to procure such softwares and drawings and designs.

The said expenditure is claimed to have been incurred to improve the efficiency of the machines and improvement of the profit-making apparatus. It has been argued that the said expenditure cannot be treated as a capital expenditure since no new asset had come into existence and that the said expenditure was incurred to increase the efficiency of the existing machines. It is further argued that ri times of rapidly changing technology due to fast development and old systems becoming obsolete, expenditure incurred for acquiring drawings and designs for improving the efficiency or profit-earning apparatus is revenue in nature and is allowable as deduction. Reliance has been placed in this regard on the decision of the Kerala High Court in the case of CIT v. BPL Systems & Projects Ltd. , following the judgment of the Supreme Court in the case of Alembic Chemical Works Co. Ltd. v.

CIT 12. Taking into consideration the facts of the case and also the above judgments, we found that there is no ground to treat the expense under consideration as capital expense. The expenses were evidently incurred for the purpose of acquiring certain drawings and designs and also softwares for the purpose of carrying on the business of the appellant company in a more efficient manner. It is a common knowledge that now-a-days, these drawings, designs and softwares do not have any lasting value Hence, the expenses under consideration is required to be allowed as revenue expenses. We direct according and delete the disallowance. At the same time, we also direct that if any depreciation might have already been allowed on the expenses under consideration treated as capital expenses, then such depreciation is to be disallowed.

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