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\$~44, 46, 48, 51 and 54

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

+ ITA 1084/2010

+ ITA 1090/2010

COMMISSIONER OF INCOME TAX

..... Appellant

versus

CHANDER BHAN

..... Respondent

+ ITA 1094/2010

+ ITA 1099/2010

COMMISSIONER OF INCOME TAX

..... Appellant

versus

KRISHAN KUMAR

..... Respondent

+ ITA 368/2011

CIT

..... Appellant

versus

BHUSHAN KUMAR

..... Respondent

Presence : Mr. Rohit Madan, Adv. for revenue

Mr. Satyen Sethi and Mr. Arta Trana Panda, Advs. for assessee

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

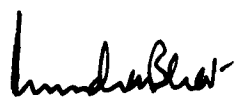
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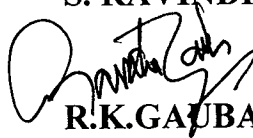
% **15.04.2015**

1. The revenue challenges the orders of the ITAT which set aside the assessment order disallowing the losses claimed by assessee's Namoli unit. The sales of the said unit – in respect of which a claim for deduction under Section 80HH and 80I had been made previously, were treated as income

from other sources. At the outset it is not disputed that the question as to admissibility of deduction under Section 80HH and 80I in the Namoli unit is now covered by the decision in ITA Nos.220/2007 and 232/2007 decided on 5.3.2015. In the circumstances, the AO's view that the losses could not be treated as genuine cannot be sustained. However, we also notice that the genuineness and admissibility of expenses claimed or the expenditure of such claims was not examined since the sales were entirely treated as income from other sources. In these circumstances, the matter is remitted for examining the admissibility of the expenditure in the light of the finding that the Namoli unit was entitled to deduction under Section 80HH and 80I.

2. The other question which is urged in all these appeals is as to the admissibility of expenditure claimed for acquiring a master plate as raw material for video tapes. The revenue's insistence on treating this expenditure as capital expenditure was set aside by the ITAT. This issue stands covered by the decision by this Court in *Commissioner of Income Tax V. Krishan Kumar* (2015) 53 Taxman 273 (Del.). This question is therefore answered in favour of the assessee. In the light of the finding with respect to first issue i.e. the expenditure claimed, which has been remitted to the AO, the revenue's appeals are disposed of.


S. RAVINDRA BHAT, J


R.K. GAUBA, J

APRIL 15, 2015/vld