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

\+ ITA 906/2017

PR. COMMISSIONER OF INCOME TAX ..... Appellant

Through: Mr. Zoheb Hossain, Sr. Standing Counsel for Revenue.

versus

M/S. SECOND LEASING PVT. LTD. ..... Respondent

Through: Mr. Ved Jain with Mr. Pranjal Srivastava, Advs.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

O R D E R

% **30.10.2017**

The Revenue claims to be aggrieved by the order of the ITAT to set aside the addition made on re-assessment of the fair market value under Section 37 of the Income Tax Act, 1961 as to the remuneration paid to the assessee's Executive Director Shri Abhinav Kumar under Section 40A(2)(b). In doing so, the ITAT relied upon the previous ruling of this Court including *Hive Communication Pvt. Ltd. v. CIT* [2013] 353 ITR 200 (Del). The ITAT also referred to *Abbas Wazir Pvt. Ltd. V. CIT* [2004] 265 ITR 77 (Alla).

It is argued by Mr. Zoheb Hossain, learned counsel that having regard to the relative inexperience of the individual concerned and his qualification – as a Commerce Graduate, the ITAT fell into error in accepting the assessee's contention that the concerned Director was responsible for an exponential increase in the company's profitability.

The AO had in this case disallowed substantial portion of the remuneration paid to the Executive Director and allowed only a fraction i.e.

₹25,000/- per month (proportional out of ₹45 lakhs for 9 months claimed by the assessee in this case). The AO was largely influenced by the relative youth and perceived inexperience of the Executive Director.

Hive Communication Pvt. Ltd. (supra) has broadly indicated the correct approach to be adopted in such cases i.e. one of commercial expediency and the arms length to be adopted by the AO in evaluating claims by the assessee. This Court also notices that the Supreme Court ruling in *Commissioner of Income Tax, West Bengal v. Edward Keventer Pvt. Ltd.,* [1978] 115 ITR 149 (SC), is the primary judgment applicable in these cases.

The direction of the AO's enquiry appeared to have been to seek quantified justification as to the contribution of the individual in this case. The Court recollects the warning of the Supreme Court in *S.A. Builders v. Commissioner of Income Tax,* (2007) 1 SCC 781 that the AO's rulings in such matters including commercial expenditure under Section 37 should not place matters in the arm chair of the assessee, or judge the merits or otherwise of a commercial transaction. In this case, the Court has no doubt that the AO did precisely that.

For the above reasons, the Court is of the opinion that no substantial question of law arises. The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

SANJEEV SACHDEVA, J

OCTOBER 30, 2017
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