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

\+ ITA 797/2017

GEO CONNECT LTD. ..... Appellant

Through: Mr.Ajay Vohra, Mr.Gaurav Jain and Mr.Aniket D. Agrawal, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX ..... Respondent

Through: Mr.Ruchir Bhatia, Sr. Standing Counsel.

ITA 798/2017

GEO CONNECT LTD. ..... Appellant

Through: Mr.Ajay Vohra, Mr.Gaurav Jain and Mr.Aniket D. Agrawal, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX ..... Respondent

Through: Mr.Ruchir Bhatia, Sr. Standing Counsel.

ITA 799/2017

GEO CONNECT LTD. ..... Appellant

Through: Mr.Ajay Vohra, Mr.Gaurav Jain and Mr.Aniket D. Agrawal, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX ..... Respondent

Through: Mr.Ruchir Bhatia, Sr. Standing Counsel.

ITA 865/2017

GEO CONNECT LTD ..... Appellant

Through: Mr.Ajay Vohra, Mr.Gaurav Jain and Mr.Aniket D. Agrawal, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX ..... Respondent

Through: Mr.Ruchir Bhatia, Sr. Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

<u>O R D E R</u>

% **21.05.2018**

In all these appeals, a common question of law is sought to be urged with respect to the disallowance under Section 37 of the Income Tax Act. The assessee claimed that one of its management trainees (who is relative of Director) had been funded with respect to pursuing higher education for the assessment years in question i.e. AY 2004-05, 2005-06, 2006-07 and 2007-08. The expenditure claimed was in respect of post graduate studies. In support of its argument, the assessee had urged that as a part of the funding, it was incumbent upon the employee to return and serve the company for a specified period. This expenditure was disallowed concurrently by all the authorities – the A.O., and the lower appellate authorities including the ITAT.

The assessee has relied upon the judgment of this Court in *Kostub Investment Ltd. vs. CIT 365 ITR 436 (Del)* as well as the decisions of other High Courts *(CIT vs. UP Asbestos Ltd. 260 CTR 194 (all); CIT vs. Kohinoor Paper Product 226 ITR 220 (MP); CIT vs. Naidunia News and Networking (P) Ltd. 210 Taxman 73 (MP); CIT vs. Ras Information Technologies (P) Ltd. 238 CTR 76 (Kar)* and *Mallige Medical Centre (P) Ltd. vs. JCIT 375 ITR 522 (Kar).*

This Court is of the opinion that the question as to whether in a given case, such expenditure is to be allowed or disallowed has to be individually examined having regard to the facts and circumstances of the case and also with respect to the nature and functioning of the assessee concerned as well as the context i.e. whether it has as a general policy to provide such funding to other categories of employees as well.

Having regard to all these factors, the Court is of the opinion that the concurrent findings of fact arrived at by both the lower appellate authorities do not call for interference and no question of law for consideration arises on this aspect.

For assessment year 2005-06 in ITA 798/2017, an additional question is urged with respect to unreasoned decision of ITAT regarding non-adjudication of the claim under the revised returns having regard to the prevailing position in law during the course of the assessment. It is also stated at the outset that separate rectification proceedings by way of application under Section 254(2) of the Income Tax Act is pending in the file of the Tribunal.

Having considered the impugned order, this Court is of the opinion that the ITAT should re-examine the matter afresh in the light of the peculiar facts and circumstances for the concerned assessment year i.e. 2005-06. It goes without saying that the appellant should in the circumstances withdraw its rectification application within two weeks from today.

The common question of law as is urged with respect to Section 37 of the Act, therefore, does not arise for consideration.

The appeals are accordingly dismissed subject to observations with respect to second question in ITA 798/2017.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

MAY 21, 2018

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