(2008) 12 DEL CK 0064

In the Delhi High Court

Case No : IT Appeal No. 111 of 2007

Commissioner of Income Tax APPELLANT

Vs

Fascel Ltd. RESPONDENT

Date of Decision : 04-12-2008

Acts Referred:
Income Tax Act, 1961 — Section 35ABB

Citation : (2009) 221 CTR 305

Hon'ble Judges : Rajiv Shakdher, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : R.D. Jolly, for the Appellant; S. Ganesh, Sanjay R. Hegde, A. Rohen Singh and Amit Kumar Chawla, for the Respondent

Final Decision : Allowed

Judgement

1. The Revenue has proposed four questions. Insofar as questions ''a'' and ''b'' are concerned, they are identical and relate to the same issue. After considering the arguments advanced by the Counsel for the parties, we frame the following question which we feel is a substantial question of law pertaining to the issue of interest:

Whether the Tribunal was correct in law in deleting the addition of Rs. 38,66,12,036 on account of interest payable on licence fee in view of Section 35ABB of the IT Act, 1961?

2. Insofar as the proposed question ''c'' is concerned, we find that the same has been adequately dealt with by the Tribunal by holding that the royalty payable by (to) the Wireless Planning and Co-ordination and the licence fee are entirely different entities. Consequently, the decision of the Tribunal, which is based on interpretation of Clause 19.4 of the licence agreement, which specifically provides that the annual licence fee does not include royalty fee payable to the WPC Wing of the Ministry of Communications for use of radio frequencies, cannot be faulted. While it is true that the licence fee is for acquiring the right to operate

telecommunication services as referred to in Section 35ABB, royalty fee on the other hand, is only for the use of the radio frequencies and depends on the bandwidth that is ultimately used. It has nothing to do with the licence fee or with the acquiring of any right to operate the telecommunication services.

3. As regards the proposed question ''d'' which reads as follows:

Whether the Tribunal was correct in law in deleting the addition of Rs. 7,96,300 made by the AO on account of payment made to the Registrar of Companies for increase in share capital following the decision of the Supreme Court in Brooke Bond India Limited Vs. Commissioner of Income Tax, West Bengal-III, Calcutta, and of this Court in Commissioner of Income Tax Vs. Hindustan Insecticides Ltd.,

4. We find that the same already stands concluded in favour of the 1 Department and against the assessee in view of our decision in the case of Commissioner of Income Tax Vs. Hindustan Insecticides Ltd., Accordingly, this question is answered in favour of the Revenue and against the assessee. The appeal survives only in respect of the question framed in the first paragraph above.

5. The appellant shall file the paper books within three months as per rules.