

IN THE HIGH COURT OF DELHI AT NEW DELHI

16.09.2009

**Present: Ms. Suruchi Aggarwal, Advocate for the appellant.
Mr. C.S.Aggarwal, Advocate with Mr. Parkash Kumar, Advocate for the
respondent.**

I.T.A. No. 676/2009 COMMISSIONER OF INCOME TAX
Vs. M/S CANON INDIA PVT. LTD

The Assessing Officer had deleted certain expenditure in the return filed by the assessee for the assessment year 1998-99 holding the expenses to be pre-operative expenses. The Income Tax Appellate Tribunal has, however, deleted the said deletion. It is clear from the order of the I.T.A.T. that the revenue had allowed such expenditure even in previous year and on that basis as well as taking into consideration the other facts, the finding of facts arrived at are that these expenses are not pre-operative expenses and the assessee had set up the business. The finding of facts arrived at by the I.T.A.T. is in the following manner:

? 5. We have considered the rival submissions. A perusal of the invoice as raised on Digmage Automation Pvt. Ltd. on 20th March, 1997 along with the confirmation dated 19th March, 1997 addressed to Reliance Industries specifying Digmage Automation Pvt. Ltd. as the authorized dealer to sell and service the range Canon Color Laser Copies and its accessories/consumables in Northern India clearly show that the operations of the assessee had infact started before 1st April 1997. Further a perusal of the copy of the return

filed for the assessment year 1997-98 also clearly show that machinery has been put to use though for a period less than 180 days and depreciation obviously only if the machinery has been put to use in the business of the assessee. The depreciation having been claimed for the assessment year 1997-98 clearly shows that the business of the assessee has started during the assessment year 1997-98. Further a perusal of the Annexure 5 to the audit report for the assessment year 1998-99 clearly show TDS too have been made in regard to the rent paid, payment to the contractors, professional fees as also salaries and these have been made right from April 1997 which obviously mean that the payment have been made in the course of the business activities of the assessee and business activities are fully operational during the assessment year 1998-99. This being so, we are of the view that, the Ld. CIT(A) erred in confirming the disallowance as made by the AO of the recruitment expenses, lease hold improvement expenses and the legal and professional expenses on account of non-commencement of the business holding the same as pre-operative expenses. In the circumstances, ground No.1,2 and 7 of the assessee's ground of appeal are allowed.?

These are pure finding of facts and no substantial question of law arises for consideration.

Dismissed.

A.K.SIKRI, J

VALMIKI J.MEHTA, J

September 16, 2009
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