

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

**ITA 110/2010**

**COMMISSIONER OF INCOME TAX .....**

**Appellant**

**Through : Mr Sanjeev Sabharwal**

**versus**

**LEAR AUTOMOTIVE INDIA LTD ..... Respondent**

**Through: None**

**CORAM:**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE SIDDHARTH MRIDUL**

**O R D E R**

**05.02.2010**

**This appeal relates to the assessment year 2001-2002 and arises out of the Tribunal's order dated 19.06.2009. The issue was with regard to the allowance of credit for TDS mistakenly deducted by Mahindra and Mahindra Limited while making the payment to the assessee amounting to Rs 25,57,500/-. The Tribunal has examined the matter in detail and has affirmed the views taken by the Commissioner of Income Tax (Appeals). The Tribunal held as under:-**

**5. Having heard the ld. DR and having perused the material on record, we find that there is no error in the order of the ld. CIT(A). Undisputedly, the assessee company earned income of Rs 4,65,00,000/- only by way of Engineering fees. Another amount of Rs 4,65,00,000/- had been received as tooling advance. This latter amount was to be paid to the vendors of M/s. Mahindra and Mahindra Ltd. This payment was a reimbursement. That being so, it could not be considered as the income of the assessee company. It was by sheer mistake that M/s. Mahindra and Mahindra Ltd. has deducted TDS on the whole amount of Rs 9,30,00,000/-. The TDS amount was thus in excess of the assessable tax on the payment made by M/s. Mahindra and Mahindra Ltd. to the assessee company. This had to be refunded, as held by the Hon'ble Supreme Court in the case of Sandvik India LTd. v. CIT? 280 ITR 643(SC). This position has duly been considered and rightly so, by the ld. CIT(A) in the impugned order. If wrong tax has been paid, it is of**

necessity to be returned, lest the department be charged of unjust enrichment.

6. In view of the above, the Id. CIT(A) was right in directing the AO to give credit of the whole of the amount of Rs 51,15,000/- of TDS against the tax assessable in the year. The department is not justified in contending that the income of Rs 4,65,00,000/- corresponding to the TDS with regard to which the AO has been directed to allow credit, was not offered to tax. As noted, this amount had been received by the assessee company as tooling advance and it was paid to the vendors of M/s. Mahindra and Mahindra as a reimbursement. This being so, the amount of Rs 4,65,00,000/- received by the assessee company as tooling advance and paid as reimbursement to the vendors of M/s. Mahindra and Mahindra cannot at all be termed as the assessee's income.?

We do not find any cause to interfere with the said findings of the Tribunal. No substantial question of law arises for our consideration. The appeal is dismissed.

**BADAR DURREZ AHMED, J**

**SIDDHARTH MRIDUL, J**

**FEBRUARY 05, 2010**

**SR**