In the High Court of Judicature at Madras
Dated : 24.03.2009

Coram :-

The Hon'ble Mr. Justice K.RAVIRAJA PANDIAN
and
The Hon'ble Mr. Justice P.P.S.JANARTHANA RAJA

Tax Case (Appeal) Nos.361, 362, 491 and 492 of 2004

The Commissioner of Income-tax-I
Chennai. ... Appellant in all Appeals

Vs.

M/s. Chakiat Agencies Pvt.Ltd.,
Chennai. .. Respondent in all Appeals

TAX CASE (Appeals) filed under Section 260 of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, dated 30.4.2003 made in I.T.A.Nos.1952, 1953, 1954/Mds/2000 and 57/Mds/2000.

For Appellant : Mrs.Pushya Sitaraman, Senior Standing Counsel
For Respondent : Mr.V.S.Jayakumar

COMMON JUDGMENT

(Judgment of the Court was delivered by K.RAVIRAJA PANDIAN,J.)

The revenue is on appeal against the order of the Income Tax Appellate Tribunal, Madras 'C Bench dated 30.4.2003 made in I.T.A.Nos.1952, 1953, 1954/Mds/2000 and 57/Mds/2000 by formulating the following questions of law:

1. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the re-assessment proceedings to deny the benefit of Section 80-O was only a change of opinion?

2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessee is entitled to the benefit of Section 80-O when admittedly no amount was received in foreign exchange?

3. Whether in the facts and circumstances of the case, the benefit of Section 80-O would also be available to a shipping agent?"

1. The assessee was a private limited company. The relevant assessment years are 1994-95 to 1997-98. For the assessment years 1994-95 and 1995-96 the assessee filed its return on 9.11.1994 admitting certain income. Subsequently, a revised return has been filed on 9.1.1996 explaining the reason by way of note enclosing the revised return claiming deduction under Section 80-O of the Act, which is based on the decision of the Delhi Bench of the Tribunal in the case of CAPTAIN K.C.SAIGAL VS. ITO (53 TTJ 564) and the Circular of CBDT No.731 dated 20.12.1995. The original assessment for the said two assessment years were completed under Section 143(3) of the Act by allowing deduction under Section 80-O as claimed by the assessee. Later on notice under Section 148 was issued by the assessing officer for both the years and re-assessment was completed by disallowing the claim of deduction under Section 80-O which was allowed in the original assessment for the reason that the service rendered by the assessee would not entitle him deduction under Section 80-O and the assessee did not bring convertible foreign exchange. In respect of the remaining two assessment years, even in the original assessment order itself, the claim has been rejected by the assessing officer for the very same reasonings. Aggrieved by that orders, the assessee filed appeals before the Commissioner of Income-tax (Appeals), which ended in dismissal. On further appeal to the Income-tax Appellate Tribunal, the Tribunal allowed the appeal of the assessee for the assessment years 1994-95 and 1995-96 on the ground that the re-assessment was not in accordance with Section 147 and was made on change of opinion. In respect of the other two assessment years also, the Tribunal allowed the assessee's appeal on the ground that the activity of the assessee comes within the purview of Section 80-O as decided by the Delhi Bench in CAPTAIN K.C.SAIGAL VS. ITO

(53 TTJ 564) and the receipt of commission in foreign exchange in India itself cannot deny the benefit to the assessee in view of the judgment of the Supreme Court in the case of J.B.BODA AND CO. PVT. LTD. VS. CENTRAL BOARD OF DIRECT TAXES reported in (1997) 223 ITR 271. The correctness of the same is now canvassed in this appeal.

2. The learned counsel appearing for the revenue contended that as there was escapement of assessment by the grant of deduction under Section 80-O, the re-assessment was in accordance with law. It was further contended by the revenue that the activity of the assessee cannot be regarded as the one stated in Section 80-O of the Act and in any event, the receipt of the amount as commission is not in convertible foreign exchange, which is the condition precedent for availing the benefit under the Act.

3. On the other hand, Mr. Jayakumar, learned counsel appearing for the assessee contended that the very same set of activity carried on by the assessee has been dealt in an identical case in the case of CAPT.K.C.SAIGAL VS. ITO (53 TTJ 564) by the Delhi Bench of the Tribunal, wherein the activities rendered by the assessee in that case were accepted as one come within the provision 80-O of the Act and as a matter of fact, that order has been accepted by the revenue and has become final. The deduction made are strictly in compliance of the provisions of the Act, which has been approved by the Supreme Court in the case of J.B.BODA AND CO. PVT. LTD. VS. CENTRAL BOARD OF DIRECT TAXES reported in (1997) 223 ITR 271.

4. We heard the argument of the learned counsel appearing on either side and perused the material on record.

5. In respect of the assessment year 1994-95 and 1995-96, revision of assessment has been made. It is an admitted fact that the assessing officer has completed the assessment originally after obtaining complete details as required him and as provided under the Act. The assessee himself filed a revised return as stated in the summation of facts on 9.1.1996 which has been scrutinised and ultimately the deduction under Section 80-O has been allowed. On the reading of the order of the Tribunal as well as the lower authority, there is no reason, what so ever, has been stated by the revenue to the effect that new materials were received by the assessing officer and the assessing officer on the basis of the new materials based his opinion that there was

escapement of assessment. There was no material placed on record to show that the assessee had suppressed any material fact or has failed to disclose fully and truly all material facts necessary for assessment. It is also on record that the re-opening of assessment was made by the very same assessing officer, who passed the original assessment order, which is evident from the copy of the notice under Section 148. Further it was observed by the Tribunal that in the said notice there was no mention of any fresh material that has led the assessing officer to reopen the assessment. From the above facts, it is clear that the assessing officer has taken recourse of reopening of the assessment only due to change of his opinion about the admissibility of deduction under Section 80-O, which was originally allowed by the assessing officer after considering the materials placed before him. The change of opinion cannot be a reason for revision of assessment is the settled proposition of law. The power to reopen an assessment was conferred by the Legislature not with the intention to enable the Income-tax Officer to reopen the final decision made against the Revenue. Where the assessing officer attempts to reopen the assessment because the opinion formed earlier by him was in his opinion incorrect the reopening could not be done. Usual reference can be had to the judgment of the Delhi High Court in the case of Jindal Photo Films Ltd. Vs. Deputy CIT reported in (1998) 234 ITR 170(Delhi), Govind Chhapabhai Patel Vs. Deputy Commissioner of Income-tax reported in (1999) 240 ITR 628(Guj), GARDEN SILK MILLS LTD. VS. DCIT reported in (1996) 222 ITR 68 (Guj) and GARDEN SILK MILLS PVT. LTD. VS. DCIT reported in (1999) 237 ITR 668(Guj). Hence we are of the view that the order of the Tribunal allowing the appeal on the ground that the reopening is bad in law is in conformity with the statutory provision as well as the law declared on that provision. Hence, the first question of law is answered in affirmative in favour of the assessee and against the revenue.

6. Questions of law Nos.2 and 3 can be considered together. The ingredients of Section 80-O of the Act for allowing the deduction are,

    (i) that the assessee should have income by way of royalty, commission, fees or any similar payment received by the assessee from a foreign enterprise in consideration for the use of any patent, invention, model, design, secret formula or process, or similar property right, or information concerning industrial,

commercial or scientific knowledge, experience or skill made available or provided or agreed to be made available or provided to the foreign enterprise by the assessee and

(ii) the consideration for such services are to be received in convertible foreign exchange in India or having been received in convertible foreign exchange outside India is brought into India, by or on behalf of the assessee in accordance with law for the time being in force for regulating payments and dealings in foreign exchange."

7. In the case on hand, there is no dispute that the assessee is a shipping agent and its activities are that on the basis of information received from the parties, intending to send cargo, they used to contact the foreign ship owners, which would meet the needs of carrying of cargo. The assessee had to ensure that the ship owner should pick up the cargos and would transport it within the time and at the agreed rates. The information regarding availability of cargo to ship owners and their destinations at frequent intervals enables the ship owners to program the ships travel touching the Indian coasts accordingly. The assessee used to contact the ship owners whenever they send the cargo and in that process they exchange various types of special information with the ship owners or concerned parties. The assessee also used to contact the ship owners and other parties on various issues before conclusion of agreements between them. For such services, the assessee received commission. After meeting the freight charges and other incidental expenses such as insurance and after deduction of the commission, the balance amount was sent to the ship owners in foreign exchange. The claim of the assessee is that they had received brokerage from the foreign ship owners in consideration for the use outside India of the information furnished by them and such information is concerning industrial, commercial or scientific knowledge, experience or skill, which would otherwise amount to rendering technical and professional service to foreign ship owners and is entitled to deduction under Section 80-O. These services could very well be regarded as information concerning commercial knowledge. As contended by Mr.Jayakumar, the very same activities in the case of CAPT.K.C.SAIGAL VS. ITO (53 TTJ 564) were regarded as one entitled for deduction under Section 80-O by the Delhi Bench of

the Tribunal and it had become final as it was not questioned by the revenue further in any forum.

8. It is also admitted fact that as against the order of the Delhi Tribunal in CAPTAIN K.C.SAIGAL VS. ITO (53 TTJ 564), no appeal has been taken by the revenue, which otherwise amounts that the revenue has accepted the reasoning given by the Delhi Tribunal.

9. The word "commercial" has been defined in Black's Law Dictionary with Pronunciations, Fifth Edition as follows:

"Relates to or is connected with trade and traffic or commerce in genera; is occupied with business and commerce. ... Generic term for most all aspects of buying and selling."

The word "commercial" has been denied in P.ramanatha Aiyar's The Law Lexicon, Reprint Edition, 1987 as follows:

"That an article is to be understood in its commercial sense, is to give it a comprehensive sense of how it is known in the general sales or traffic of the markets. ... It means not merely the sense in which merchants understand it, but also the idea which buyers and sellers in the market generally have of the article."

10. The Delhi High Court in the case of Mittal Corporation s case [2005] 272 ITR 87, on the facts that the assessee received commission income as buying agent of foreign enterprises, the assessee claimed deduction under Section 80-O of the Act on commission income which was earned on providing commercial information to the foreign buyers. It was held that it cannot be said that the assessee must provide technical services even where it receives consideration for only providing commercial information. The section is required to be interpreted accordingly. On the facts, the Tribunal clearly held that there is no dispute that it is commercial information which the assessee provided to the foreign buyers and in consideration thereof, the assessee received commission which was in convertible foreign exchange. In view of this, the claim made by the assessee cannot be denied under section 80-O of the Act.

11. In the case of Godrej and Boyce Mfg. Co. Ltd. Vs. Potnis (S.B.), CIT (Chief), (1993) 203 ITR 947(Bombay High Court), the petitioners who manufactured steel and metal products entered into two agreements with a foreign company for establishing a plant in Indonesia. One agreement was titled "technical assistance

agreement" and the second agreement was titled "management service agreement". Under the second agreement, a provision was made for the giving of all marketing, industrial, manufacturing, commercial and scientific knowledge, experience and skill for the efficient working and management of the foreign company. The Chief Commissioner of Income-tax held that the second agreement did not qualify for approval under section 80-O of the Income-tax Act, 1961. On a writ petition against the order, the Court held that the order denying approval was not justified and was liable to be quashed. The court directed that the application should be reconsidered by the Chief Commissioner for a decision in accordance with the law laid down by the Supreme Court in Continental Construction Ltd. v. CIT [1992] 195 ITR 81], wherein it was held thus:

"It is not possible to postulate, as a general proposition of law, that all managerial services must necessarily be non-technical services. It depends on the nature of the expertise required for rendering the managerial services. Ultimately, it would be a matter of evaluation of the factual details and a decision against the background of the factual matrix of each case."

12. In the case of Li & Fung India P. Ltd. Vs. Commissioner of Income-tax, (2008) 305 ITR 105, the judgment was rendered by Delhi High Court, wherein the assessee rendered technical services outside India as buying agent and claimed deduction under section 80-O of the Income-tax Act, 1961. The Assessing Officer denied the deduction claimed by the assessee on the ground that the assessee merely rendered managerial services and not technical services and therefore did not satisfy the requirement under section 80-O of the Act. The Commissioner (Appeals) held that the assessee was entitled to deduction. The Tribunal held that 30 per cent of the fees received by the assessee was towards services rendered in India and quantified 70 per cent. of fees received for deduction under section 80-O and accordingly directed the Assessing Officer to recompute the deduction. The High Court allowed the appeal holding that

"as long as the technical and professional services were rendered from India and were received by a foreign Government or enterprise outside India, deduction under section 80-O of the Act would be available to the person rendering the services even if the foreign recipient of the services utilized the benefit of such services in India. Since the contract obliged the

assessee to make available information and render services to the foreign client of the nature outlined in section 80-O and Circular No. 700 dated March 23, 1995, the assessee received the payment which was in convertible foreign exchange. Therefore, the assessee had to be given the benefit of deduction available under section 80-O of the Act. The Tribunal erred in restricting the claim of deduction under section 80-O to 70 per cent."

13. In the case of Central Board of Direct Taxes Vs. Oberoi Hotels (India) Pvt. Ltd, (1998) 231 ITR 148, the respondent hotel entered into an agreement with a foreign enterprise, a Nepal company, which owned and operated a hotel in Kathmandu. The agreement provided for use by the foreign enterprise of the respondent's name and was to remain in force for fifteen years with an option of extension for five years. The respondent would recruit and train the requisite staff for the hotel through training programmes. The respondent would use its best efforts to advertise and promote the business of the hotel through its existing facilities. The respondent would make available for the hotel, its staff of consultants and specialists who were qualified to provide advice in the various departments and aspects of hotel operations. Salaries and expenses of these persons would be borne or reimbursed by the foreign enterprise. The respondent was to provide training and instruction for key personnel for the hotel in order to prepare them to serve the hotel in the capacities for which they would be trained. The respondent was to use the hotel solely for the operation of a first class hotel on international standards but the same would always be and be deemed to be owned by the foreign enterprise exclusively. The respondent, however, would have a representation on the board of directors of the foreign enterprise. The respondent was entitled to 15 per cent. of the gross operating profits. The respondent was to maintain full and adequate books of account and other records reflecting the results of the operation of the hotel and deliver to the foreign enterprise on or prior to the end of each month a profit and loss statement. The respondent, as required by section 80-O of the Income-tax Act, 1961, sought the approval of the Central Board of Direct Taxes of the agreement. The Central Board of Direct Taxes refused to grant approval, holding that the respondent, under the agreement, merely rendered managerial services which did not amount to technical services, and also that the fee received by it for use of its trade name was too small to quantify for the purposes of section 80-O. The respondent filed

a writ petition which the Delhi High Court allowed. On appeal to the Supreme Court by the Central Board of Direct Taxes, while dismissing the appeal, the Supreme Court held that

"running a well equipped modern hotel is no ordinary affair. One needs a great deal of expertise, skill and technical knowledge for the purpose. The agreement in question had to be seen as a whole and so examined it was apparent that it provided for the rendering not only of technical services for operating the hotel of the foreign enterprise but also provided for professional and other services in connection with operating of the hotel. Section 80-O was enacted with the twin objects of encouraging the export of Indian technical know-how and augmentation of foreign exchange resources of the country. Although, after the amendment of section 80-O by the Finance (No. 2) Act of 1991 the words "technical or professional services" had been inserted in the place of the words "technical services", in a matter of the present nature and the legislative intention to give relief, the term "technical services" must be interpreted to include professional services also. Considering the scope of the agreement and the width of section 80-O, the agreement provided for "information concerning industrial, commercial or scientific knowledge, experience or skill made available" by the respondent to the foreign enterprise for running of the hotel. Royalty, commission or fees could be in terms of a percentage of the profits earned by the foreign enterprise on account of services rendered by the Indian company. It was the substance of the case which mattered and not the name. The Central Board of Direct Taxes was not right in not granting approval of the agreement to the respondent under section 80-O of the Act.

[Since the matter related to the year 1970 the court did not send the matter back to the Central Board of Direct Taxes for fresh appraisal.]

After the amendment of section 80-O by the Finance (No. 2) Act of 1991, the words "technical or professional services" have been inserted in the place of the words "technical services". The amendment was only of clarificatory nature and the term "technical services" always included within it professional services as well.

14. The basic purpose of section 80-O is the spread by an Indian assessee of any patent, invention, model, design, secret formula

or process, or similar property right, or information concerning industrial, commercial or scientific knowledge, experience or skill of the assessee for use outside India and in that process to receive income to augment the foreign exchange resources of the country. The assessee can also make available to the foreign enterprise, technical and professional services, expertise of which it possesses for earning foreign exchange for the country.

15. The Central Board of Direct Taxes circular in Circular No. 700 dated March 23, 1995 clarified Section 80-O by stating that as long as the technical and professional services are rendered from India and are received by foreign government or enterprise outside India, deduction under Section 80-O of the Act would be available to the person rendering the service. Even if the foreign recipient of the service utilises the benefit of such services in India.

16. It is an undisputed fact that the assessee has rendered commercial service as stated in the summation of facts to the foreign shipping owner and for the use of such information outside India by the foreign ship owner received commission in convertible foreign exchange. Hence, the rendering of the commercial service and receiving commission in foreign exchange by the assessee would entitle the assessee to the benefit of Section 80-O. Foreign exchange earned is foreign exchange saved. Mere deduction of the commission in foreign exchange before sending the entire consideration in foreign exchange to the foreign ship owners and getting it back from the ship owners in convertible foreign exchange after sending the entire amount would not change the character of receiving the commission in foreign exchange. With reference to the condition of receiving income in foreign exchange in order to come under Section 80-O, the claim of the assessee is that the brokerage is either directly received from the foreign ship owners in convertible foreign exchange or in the alternative the Indian parties making payment of freight charges in foreign currency deduct the amount of brokerage in terms of foreign currency and the same is received by the assessee through the Bankers after converting the said deduction in foreign currency into rupees, which according to the assessee, is as good as receiving the payment in convertible foreign exchange as the outflow of foreign currency from India is restricted to that extent. The decision of the Supreme Court in the case of J.B.BODA AND CO. PVT. LTD. VS. CENTRAL BOARD OF DIRECT TAXES reported in (1997) 223 ITR

271 is in favour of the assessee. In that case, the Oil and Natural Gas Commission had insured all their offshore oil and gas exploration and production operations with an Indian insurance company. In respect of this risk, the appellant, a reinsurance broker, contacted a company in London who were brokers for placement of reinsurance business. The appellant furnished all the details about the risk involved, the premium payable, the period of coverage and the portion of the risk sought to be reinsured. The London brokers contacted various underwriters and after getting confirmation about the portion of the risk the foreign reinsurers were prepared to undertake, informed the appellant about such reinsurance coverage. Thereafter the Indian ceding company handed over the total premium to be paid by it to the foreign reinsurance company, to the appellant for onward transmission. The appellant applied to the Reserve Bank of India for permission with a statement showing the total reinsurance premium payable to the foreign parties, and after deducting the brokerage due to the appellant for technical services rendered, as the balance to be remitted to the London brokers. The appellant sought the approval of the Central Board of Direct Taxes in terms of section 80-O of the Income-tax Act, 1961, on the ground that the reinsurance brokerage retained in India under agreement with the London brokers amounted to receipt of income in convertible foreign exchange. The Central Board of Direct Taxes refused approval. When the matter was taken to the Supreme Court, the Supreme Court allowed the appeal by holding that the remittance to the foreign reinsurance company was made through the Reserve Bank of India in conformity with the agreement between the appellant and the foreign reinsurers, and that the remittance statement filed along with the application to the Reserve Bank showed that the amount due to the foreign reinsurers as also the brokerage due to the appellant and the balance due to the foreign reinsurers were expressed and remitted in U.S. dollars. The entire transaction effected through the medium of the Reserve Bank of India was expressed in foreign exchange and in effect the retention of the fee due to the appellant for the services rendered was in U.S. dollars. This was receipt of income in convertible foreign exchange. A formal remittance to the foreign reinsurers first and thereafter receipt of the commission from the foreign reinsurer was unnecessary. Moreover, the Central Board had by circular dated December 20, 1995, clarified the real scope and impact of section 80-O stating that the receipt of brokerage by a reinsurance agent in India from

the gross premia before remittance to his foreign principal would also be entitled to the deduction under section 80-O of the Act. The Apex Court further observed that a two-way traffic is unnecessary. To insist on a formal remittance first and thereafter to receive the commission from the foreign reinsurer, will be an empty formality and a meaningless ritual, on the facts of this case". In view of the said judgment, this contention also fails.

17. For the above said reasons, the second and third questions of law are also answered in affirmative and against the revenue. The appeals are dismissed.

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.03.2009

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
and
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA
Tax Case (Appeal) No.108 of 2009

The Commissioner of Income Tax,
Chennai-III. **Appellant**

v.

M/s Panasonic Home Appliances,
SPIC House, Annexe 6th floor,
88, Mount Road,
Chennai-600 032. Respondent

Appeal is filed under section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai 'B' Bench dated 27.06.2008 made in ITA No. 525(Mds.)/2008.

For appellant : Mr.K.Subramaniam, Senior Standing Counsel

JUDGMENT

(Judgment of the Court was delivered by P.P.S.JANARTHANA RAJA,J)

The above Tax Case Appeal is filed by the Revenue against the order of the Income Tax Appellate Tribunal, Chennai 'B' Bench dated 27.06.2008 made in ITA No. 525(Mds.)/2008 by raising the following question of law:

1. "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the provision for encashment of leave of Rs.1.19 lakhs claimed by the assessee was allowable on the basis of the Supreme Court's decision in the case of Bharath Earth Movers Ltd., Vs. Commissioner of Income Tax (245 ITR 428) since in the assessee's case the liability was only a contingent liability as clearly mentioned in the Tax Audit Report and not an ascertained liability which was capable of being quantified with reasonable certainty?"

2. The assessee is engaged in manufacture and sale of Electric Rice cookers and Mixies. The relevant assessment year is 1998-1999 and the corresponding accounting year ended on 31.03.1998. The assessee had filed its return of income on 27.11.1998 returning total income of Rs.'Nil' and the same was processed by the Assessing Officer under Section 143(1) of the Income Tax Act. Thereafter, the assessing officer noticed from the return that the assessee had debited Profit and Loss Account with provision for warranty claims amounting to Rs.5,23,197/- and had not added back for the purpose of calculation of profits under Section 115JA. The said provision for expenditure was not allowable and there was reason to believe that the income chargeable to tax had

escaped assessment by virtue of allowing wrong claim of expenditure. Therefore, the assessment was reopened under Section 147 by issuing notice under Section 148 of the Act on 31.08.2004. Later, the assessment was completed on 24.03.2006 under Section 143(3) read with section 147 of the Act determining the book profit under Section 115JA at Rs.88,36,818/- and thereby arriving the deemed income at 30% of the book profit at Rs.26,51,045/-. While completing the assessment, the assessing officer has allowed the relief claimed in respect of provision made for leave encashment of Rs.1.19 lakhs. The Commissioner of Income Tax, Chennai-III, set aside the order of the assessment under Section 263 of the Income Tax Act, 1961 on the ground that it is erroneous and prejudicial to the interest of the revenue. The Commissioner, while enhancing the assessment, has directed the Assessing Officer to modify the assessment by disallowing and adding back the provision for doubtful debts and the provision for leave encashment in computing the book profits for the purpose of Section 115JA. Aggrieved by the same, the assessee had filed an appeal before the Income Tax Appellate Tribunal. The Tribunal, by following the decision of the Supreme Court in the case of BHARAT EARTH MOVERS VS. CIT (2000) 245 ITR 428, allowed the claim. Aggrieved by that order, the Revenue has filed the present appeal.

3. The learned counsel appearing for the revenue submitted that the Tribunal is wrong in allowing the appeal by relying on the decision of the Supreme Court in the case of BHARAT EARTH MOVERS VS. CIT reported in (2000) 245 ITR 428. He further submitted that the Tribunal erred in not observing that in the assessee's case, the liability in question was only contingent in nature and not the ascertained/determined liability. He further submitted that the Tribunal erred in not noticing that the tax auditors had qualified the provision in the Tax Audit Report in Form 3CD as liability of contingent nature and hence, the order of the Tribunal is not in accordance with law and the same has to be set aside.

4. Heard the learned counsel appearing for the revenue and perused the materials available on record.

5. It is seen that the issue involved in this appeal is squarely covered by the judgment of the Supreme Court in the case of BHARAT EARTH MOVERS VS. CIT reported in (2000) 245 ITR 428, which is decided in favour of the assessee. Therefore, we are of the view that the Tribunal is correct in following the judgment of the Supreme Court cited supra and we do not find any error or

illegality in the order of the Tribunal warranting interference. The learned counsel appearing for the revenue has not produced any material or case law to take a contrary view of the Tribunal. In these circumstances, no question of law arises for consideration. Accordingly, the Tax Case Appeal is dismissed.

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