

APPORTIONMENT OF EXPENSE ETC

ITEM NO.1 COURT NO.2 SECTION IIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).18121/2007

(From the judgement and order dated 12/01/2007 in WP No.2111/2006
of the HIGH COURT OF DELHI AT NEW DELHI)

COMMR.OF INCOME TAX-IV,DELHI & ANR. Petitioner(s)

VERSUS

M/S GLAXO SMITHKLINE ASIA(P) LTD. Respondent(s)

(With prayer for interim relief and office report)
(FOR FINAL DISPOSAL)

Date: 25/11/2009 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA
HON'BLE MR. JUSTICE H.L. DATTU

For Petitioner(s) Mr. Gopal Subramaniam, ASG.
Mr. V.Shekhar, Sr.Adv.
Mr. H.R. Rao, Adv.
Mr. Arijit Prasad, Adv.
Ms. Pia Singh, Adv.
Mr. B.V. Balaram Das,Adv.

For Respondent(s) Mr. Ajay Vohra, Adv.
Ms. Kavita Jha,Adv.
Mr. Sandeep S.Karhail, Adv.

UPON hearing counsel the Court made the following
O R D E R

This matter has been heard by us at length.

This batch of Civil Appeals concerns Assessment

Year 2001-2002. However, its effect is recurring. The

question involved concerns Quantum of Allocation of Over

Head Costs (indeterminate), viz., reimbursement of cross-

charges by the assessee herein to its service-provider for

1

undertaking the work of selling, distribution, marketing etc. and whether the Level of Effort criteria should form the basis of such reimbursement (cross-charges) in the matter of allocation of over-head expenses.

Having gone through the record, we find that during the assessment years relevant to the Accounting Year April, 1997 to March 1998 onwards upto April, 2004 to March, 2005, the Department has been assessing the cross charges on purely adhoc basis. This cannot continue for all times. At the same time, we also find that during the relevant financial years mentioned above, the exercise is revenue neutral. Therefore, we do not wish to interfere with the above-mentioned financial years' accounting.

However, in our view, from the assessment year, which the parties may agree upon, the Level of Effort criteria can be applied subject to the relevant documents/empirical data being provided by the assessee to the Department.

What should be that empirical data (including the log books), will be supplied to the Court on the next date of hearing to enable this Court to dispose of the matter.

This would put an end to dispute between parties in future.

Before concluding, we may mention that we had directed the Department to appoint their own Chartered Accountants. Accordingly, Thakur Vaidyanath Aiyar & Co., Chartered Accountants for the Department, have submitted their own Report in which they have stated that the Level

2

of Effort is a relevant criteria. However, the said Report is adverse to the assessee only on the ground that empirical data was not maintained by the assessee during the relevant accounting years.

As stated above, in order to put an end to the controversy in the future years, we are required to have the necessary format in which the empirical data would be provided by the assessee to the Department so that adhocism which has been going on in the past is obviated.

One more suggestion may also be considered by the learned Solicitor General. It has been suggested on behalf of the assessee that the assessee as well as the service provider are prepared to abide by the transfer price/arms length price which may be fixed by the Transfer Pricing Officer of the Department. According to the assessee, even if this formula is accepted by the Department, then, in future adhocism could be avoided.

Matter to stand over to 13th January, 2010, to be listed first on Board for orders.

(N. ANNAPURNA) (PUSHAP LATA BHARDWAJ)
COURT MASTER COURT MASTER