**IN THE INCOME TAX APPELLATE TRIBUNAL**
**MUMBAI BENCHES "B", MUMBAI**

**BEFORE SHRI DINESH KUMAR AGARWAL (J.M.)**
**AND SHRI N.K. BILLAIYA (A.M.)**

**ITA Nos. 2339 to 2341/Mum/2011**
Assessment Years : 2002-03, 2003-04 & 2004-05

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| N. Jamnadas & Co.,<br>16, Bank Street, Fort,<br>Mumbai -400 001. | Vs. | Deputy Commissioner of<br>Income-tax,<br>Central Circle -39,<br>Room No. 32(1),<br>Aayakar Bhavan,<br>M. Karve Road,<br>Mumbai- 20.<br>PAN : AACFN8427G |
| **(Appellant)** | | **(Respondent)** |

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| Assessee by : | Shri Y.P. Trivedi &<br>Ms. Usha Dalal |
| Revenue by : | Shri Paresh Johri |

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| **Date of hearing** | **1-5-2012** |
| **Date of pronouncement** | **16-5-2012** |

## O R D E R

**PER DINESH KUMAR AGARWAL, J.M.**

All these appeals preferred by the assessee are directed against the consolidated order dated 5-1-2011 passed by the ld. CIT (A) – 41, Mumbai for the assessment years 2002-03, 2003-04 & 2004-05. Since facts are identical and issue involved is common, all these appeals are disposed of by this common order for the sake of convenience.

2. Briefly stated facts of the case are that the A.O. while giving effect to the order of the Tribunal, wherein the Tribunal vide order in ITA Nos.

4785/M/2005, 4786/M/2005 order dtd. 28-11-2008 for assessment years 2002-03 & 2003-04 and ITA No. 6744/M/2007 order dtd. 20-3-2009 for A.Y. 2004-05 has set aside the matter back to the file of the A.O. for verification of the documents and adjudication thereof about the applicability of Explanation to section 37(1) of the Income Tax Act, 1961 (the Act) thereto after providing reasonable opportunity of being heard to the assessee. The A.O., pursuant to the order of the Tribunal, after considering the assessee's explanation wherein the assessee after relying on the ratio of the decision of the Tribunal in APL (India) Pvt. Ltd. V. CIT (2005) 96 ITD 227(Mum), submitted that the expenses claimed by the assessee incurred on behalf of the principals be allowed, did not allow the deduction of the expenses and upheld the disallowance as made in the original assessment for the above assessment years.

3. On appeal, the ld. CIT(A) while observing that as per the provisions of section 37(1) of the Act, no illegal expenditure is allowable as deduction, upheld the disallowance made by the A.O. for the above assessment years.

4. Being aggrieved by the order of the ld. CIT(A), the assessee is in appeal before us challenging in all the grounds the sustenance of disallowance made by the A.O.

5. At the time of hearing, the ld. Counsel for the assessee submits that the above issue is squarely covered in favour of the assessee by the

order of the Tribunal in assessee's own case in ITA Nos. 4321/Mum/2008 & 4322/Mum/2008 dtd. 11-2-2011 for assessment years 1997-98 & 1998-99, ITA No. 5293/M/2010 dtd. 20.10.2011 for A.Y. 2007-08 and ITA Nos. 750/751 & 752/Mum/2010 dtd. 7-3-2012 for assessment years 1998-99, 2002-03 & 2003-04. The ld. Counsel for the assessee has also placed on record a copy of the said orders of the Tribunal.

6. On the other hand, the ld. D.R. supports the order of the A.O. and the ld. CIT(A).

7. We have carefully considered the submissions of the rival parties and perused the material available on record. We find that the facts are not in dispute in asmuch as it is also not in dispute that the expenses claimed by the assessee has been incurred on behalf of principles. We further find that identical issue came up before the Tribunal in assessee's own case wherein the Tribunal in all the cases (cited supra) in view of the concession made by ld. Sr. Advocate of the assessee restricted the disallowance to 25% of the expenses by considering that it could be assumed that the expenditure to the extent of 25% was paid to Government employees and the same is covered by Explanation to section 37(1) of the Act. In absence of any distinguishing feature brought on record by the Revenue, we respectfully following the consistent view of the Tribunal, sustain the disallowance to 25% of the sundry expenses

and delete the balance amount of disallowance of expenses sustained by the ld. CIT(A). The A.O. is directed to allow the due relief to the assessee. We hold and order accordingly. The common grounds taken by the assessee in all these appeals are, therefore, partly allowed.

8. In the result, appeals filed by the assessee are partly allowed.

Order pronounced in the open court on 16.5.2012.

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| Sd/- | Sd/- |
| (N.K. BILLAIYA) | (DINESH KUMAR AGARWAL) |
| ACCOUNTANT MEMBER | JUDICIAL MEMBER |

Mumbai, Dated 16.5.2012.

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Copy to:
1. The Appellant
2. The Respondent
3. Commissioner of Income Tax (Appeals)- 41, Mumbai
4. Commissioner of Income Tax – Central- III, Mumbai
5. Departmental Representative, Bench 'B', Mumbai

//TRUE COPY// BY ORDER

ASSTT. REGISTRAR, ITAT, MUMBAI