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**(1984) 08 RAJ CK 0033**

**In the Rajasthan High Court**

**Case No : Income Tax Reference No. 10 of 1974**

Additional Commissioner of Income Tax

APPELLANT

Vs

Farasol Ltd.

RESPONDENT

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**Date of Decision : 22-08-1984**

**Acts Referred:**

Income Tax Act, 1961 — Section 199, 237, 37(1), 40

**Citation : (1987) 163 ITR 364**

**Hon'ble Judges : S.N. Bhargava, J; S.C. Agrawal, J**

**Bench : Division Bench**

**Advocate : R.N. Surolia, for the Appellant; S.L. Arora and J.P. Goyal, for the Respondent**

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## **Judgement**

1. This reference has been made u/s 256(1) of the Income Tax Act, 1961 ("the Act"), by the Tribunal, Jaipur Bench, Jaipur.

2. Farasol Ltd. ("the assessee") is a foreign company having its management and control outside India. By order of the Central Board of Direct Taxes dated December 5, 1964, the assessee has been treated as a company for the purpose of the Act. The assessee submitted a tender for shallow drilling in Jaisalmer area to the Oil and Natural Gas Commission. The formal intimation of the acceptance of the said tender was given to the assessee by the Oil and Natural Gas Commission on October 11, 1963. The formal contract was executed on February 17, 1964, and the actual drilling operations were started in the, month of December, 1964. As a special case, the assessee was permitted by the Company Law Board to prepare its accounts for the period of 15 months covering the period from September 10, 1964, to December 31, 1965. The assessee submitted its return for the aforesaid period relevant to the assessment year 1966-67 wherein it declared a net loss of Rs. 5,84,746. In the said return, the assessee claimed deduction of a sum of Rs. 2,36,007 paid by it as interest to banks outside India, i.e., in Paris, on loans taken by the assessee. The assessee also claimed deduction of a sum of Rs. 3,50,172 on account of expenses. The

assessee also claimed depreciation on various items of machinery and furniture.

3. The Income Tax Officer, Jaipur, vide his assessment order dated December 30, 1967, assessed the assessee on a total income of Rs. 9,67,427. The Income Tax Officer disallowed the deduction of Rs. 2,36,007 towards interest claimed by the assessee on the ground that the said interest had accrued to the foreign banks outside India and the assessee was liable to deduct tax under the Act and in view of the provisions of Section 40(a)(i) of the Act, the deduction of the said interest could not be allowed to the assessee. The Income Tax Officer also disallowed expenses to the extent of Rs. 3,26,794 which are related to the period prior to February 10, 1964, and also disallowed the expenses of Rs. 19,126 claimed by the assessee on account of stores consumption on the ground that the said expenses had also been incurred before February 10, 1964. In the matter of depreciation, the Income Tax Officer held that the assessee could not claim depreciation for a period of more than 12 months even though some of the assets of the assessee were worked for more than one full year and he allowed depreciation on furniture (camp equipment) at the rate of 10 per cent.

4. Feeling aggrieved by the aforesaid order passed by the Income Tax Officer, the assessee filed an appeal which was disposed of by the Appellate Assistant Commissioner by order dated September 26, 1970. Before the Appellate Assistant Commissioner, it was submitted on behalf of the assessee that the assessee was not liable to deduct tax on the interest paid to the foreign banks and the same was not income chargeable to tax in the taxable territory of India. This contention of the assessee was not accepted by the Appellate Assistant Commissioner who held that although the interest was paid in France for the money borrowed there, the money was brought into India in kind through transfer of capital assets and, therefore, the interest payable to the foreign banks was chargeable to Income Tax in India and it was the responsibility of the assessee to deduct the Income Tax thereon. The Appellate Assistant Commissioner, however, held that after the assessment order has been issued by the Income Tax Officer, the assessee had paid a sum of Rs. 2,05,264 to the State Bank of India, Bombay, on March 30, 1970, towards the assessee's liability to deduct tax at source from the payments made to non-residents and that in view of the aforesaid payment by the assessee under Part B of Chapter XVII of the Act, the Appellate Assistant Commissioner deleted the disallowance of Rs. 2,36,007 made by the Income Tax Officer. With regard to the expenses claimed by the assessee, namely, Rs. 3,26,794 and Rs. 19,126, the Appellate Assistant Commissioner confirmed the order of the Income Tax Officer and disallowed the said deductions for the reason that the said expenses did not relate to the period of assessment relevant to the assessment year under appeal and held that the said expenses formed part of capital expenditure. As regards depreciation, the Appellate Assistant Commissioner held that the assessee could claim depreciation in excess of 12 months in respect of those assets which were used on the basis of actual user in view of the fact that the assessee had been permitted to prepare the accounts for a period in excess of 12 months. With regard to the

camp equipment, the Appellate Assistant Commissioner held that the depreciation should be allowed at the rate of 15 per cent. as claimed by the assessee instead of 10 per cent. allowed by the Income Tax Officer, for the reason that there were no permanent houses for the staff in the desert area where drilling operations were being carried on and the equipment and furniture were being used for the purpose of boarding and lodging provided to the staff.

5. Against the aforesaid order of the Appellate Assistant Commissioner, two appeals were filed before the Tribunal, one by the Revenue and the other by the assessee. In the appeal filed by the Revenue, objection was taken to the order of the Appellate Assistant Commissioner in so far as it related to the deletion of the disallowance of the sum of Rs. 2,36,007 paid as interest to the foreign banks by the assessee and also the allowance of depreciation at the rate of 15 per cent. on camp equipment. The assessee, in its appeal, raised objection to the disallowance of the expenditure of Rs. 3,26,794 and Rs. 19,126.

6. Both the appeals were disposed of by the Tribunal by a common order dated November 3, 1972. As regards the deduction of the amount of Rs. 2,36,007 claimed by the assessee towards interest paid to the foreign banks, the Tribunal held that interest income of the foreign banks in the present case should be taken as income chargeable under the Act within the meaning of Section 40(a)(i). In taking the aforesaid view, the Tribunal observed that for the purpose of determining as to whether the income of a non-resident is chargeable to tax, what is material is the nature of the payment that is made to the nonresident and if what is paid to the non-resident is an item which falls in the category of income, tax will have to be deducted at source and the payer cannot be and is not expected to apply himself to the scope of the activities of the nonresident and arrive at a decision whether in the particular circumstances of the payee, the income would be exempt or not in his hands. The Tribunal further held that prima facie even interest paid to a non-resident in respect of moneys charged from him would be deemed to accrue or arise in India, where the money is lent at interest to an assessee abroad and brought by the latter in India in cash or kind and, therefore, the interest income in the present case should be taken as interest chargeable under the Act within the meaning of Section 40(a)(i). The Tribunal also held that though the assessee is a foreign company, it has an office in India and it is carrying on business activities in India and it can be treated as a person in India. The Tribunal, however, held that in the context of Section 40(a)(i), the reference to a person in India must be taken to mean reference to a person in India other than the assessee. The Tribunal further held that in the present case, the tax which the assessee was liable to was deducted at source u/s 195 of the Act which in fact has been recovered from it by the Department and that for the purpose of Section 40(a)(i), tax recovered by the Department is to be treated as tax paid. The Tribunal, therefore, agreed with the Appellate Assistant Commissioner that since the assessee had paid the tax deductible on the interest amount paid to the foreign banks, the assessee was entitled to the deduction of the same. The Tribunal, however, disagreed with the Appellate Assistant

Commissioner that for the allowance of depreciation, camp equipments used for the purpose of providing lodging facilities to the members of the staff would fall under the category "furniture" in a boarding house. According to the Tribunal, the assessee was entitled only to the normal depreciation at 10 per cent. in respect of such equipment. The appeal of the Department was, therefore, allowed to this extent. With regard to the appeal of the assessee, the Tribunal dismissed the said appeal and upheld the orders of the Income Tax Officer and the Appellate Assistant Commissioner disallowing the assessee's claim for expenses of Rs. 3,26,794 and Rs. 19,126 on the ground that the said expenditure related to a period prior to the previous year.

7. Feeling aggrieved by the order of the Tribunal, two reference applications were submitted u/s 256(1). Reference Application No. 111(Jp.) of 1972-73 was submitted by the Additional Commissioner and Reference Application No. 116 (Jp.) of 1972-73 was submitted by the assessee. On the basis of the aforesaid applications, the Tribunal has referred the following questions for the decision of this court:

Reference Application No. 111 of 1972-73 :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that tax was paid by the assessee under the provisions of Part B of Chapter XVII of the Income Tax Act, 1961, and further that the assessee was entitled to the deduction of interest amounting to Rs. 2,36,007 as the provisions of Section 40(a) of the Income Tax Act, 1961, were not applicable ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the interest income in the present case should be taken as interest chargeable under the Act within the meaning of Section 40(a) of the Income Tax Act, 1961 ?

3. Whether, on the facts and in the circumstances of the case, and on a true interpretation of Section 163 of the Income Tax Act, 1961, read with Section 40(a), was the Appellate Tribunal justified in holding that the assessee-company was not an agent of non-resident payee ?"

In Reference Application No. 116 of 1972-73

1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in disallowing the expenditure of Rs. 3,26,794 and Rs. 19,126 incurred before February 17, 1964, from the total income for the assessment year 1966-67 ?

2. Whether the furniture used for boarding and lodging constitutes furniture used for a boarding house on which depreciation was allowable as per the Income Tax Rules, 1962, at 15 per cent. ?"

8. As regards question No. 2 in Reference Application No. 111 of 1972-73, the Tribunal has observed in the statement of case that the departmental

representative had pointed out that the said question does not arise out of the order of the Tribunal and the Tribunal agreed to the said contention of the departmental representative and directed that the said question could not be referred. This would show that the Tribunal has referred questions Nos. 1 and 3 in respect of Reference Application No. 111 and questions Nos. 1 and 2 in Reference Application No. 116.

9. We have heard Shri R. N. Surolia, the learned counsel for the Revenue, and Shri S.L. Aneja, the learned counsel for the assessee.

10. We will first take up the questions referred in Reference Application No. 111 of 1972-73 relating to the sum of Rs. 2,36,007 claimed by the assessee as deduction towards interest paid by it to the non-resident banks. As indicated earlier, the Appellate Assistant Commissioner and the Tribunal have held that the aforesaid amount was income of the non-resident foreign bank which was chargeable to tax and since the assessee had paid the tax in respect of the aforesaid amount, deduction of the said amount should be allowed from the income of the assessee. Shri Surolia questions the correctness of the aforesaid findings recorded by the Appellate Assistant Commissioner and the Tribunal and has submitted that the tax which was recovered from the assessee should not be treated as tax paid for the purposes of Section 40(a)(i) and that the Appellate Assistant Commissioner and the Tribunal have erred in allowing the said deduction. Shri Aneja has, on the other hand, supported the findings recorded by the Appellate Assistant Commissioner and the Tribunal in this regard and has submitted that the amount of tax which has been recovered from the assessee must be deemed to be tax paid under Part B of Chapter XVII and since the tax had already been paid, the said amount of interest could not be added in the income of the assessee and the Appellate Assistant Commissioner and the Tribunal have rightly allowed the deductions of the interest from the income of the assessee. Shri Aneja has further submitted that the Tribunal was in error in holding that the amount of interest paid by the assessee to the non-resident foreign banks was income chargeable in India and has contended that the said income could not be said to be the income of the non-resident foreign banks which had accrued in India u/s 9 of the Act. Shri Aneja has also submitted that the Tribunal was in error in holding that for the purpose of Section 40(a), the assessee could not be treated as the agent of the nonresident foreigner in respect of the payments made to him and that in the present case, the assessee must be held to be the agent of the non-resident foreign banks to whom interest was paid and in that view of the matter, the amount of interest paid by the assessee to the non-resident foreign banks could not be added in the income of the assessee u/s 40(a).

11. In our opinion, it is not necessary to deal with the contention urged by Shri Aneja that the interest amount paid by the assessee to the non-resident foreign banks should not be treated as income of the non-resident foreign banks which accrued in India and that the said income was not income chargeable to tax for

the purpose of Section 40(a) and the other contention of Shri Aneja that the assessee being the agent of the non-resident foreign banks, the amount of interest paid by the assessee to the non-resident foreign banks should not be added in the income of the assessee, because we find ourselves in agreement with the findings recorded by the Tribunal that the amount that has been recovered from the assessee on account of tax on the aforesaid interest amount of Rs. 2,36,007 paid by the assessee as interest to the non-resident foreign banks must be treated as the tax paid under Part B of Chapter XVII for the purpose of Section 40(a). We are unable to agree with Shri Surolia that the word "paid" as used in Sub-clause (i) of Clause (a) of Section 40 should be construed to mean only voluntary payment and does not include payment made by the assessee in recovery proceedings initiated against him. In our opinion, the word "paid" in Sub-clause (i) of Clause (a) of Section 40 is wide enough to include a payment whether made voluntarily or during the course of proceedings for recovery initiated against the assessee. As observed by the Tribunal, the object of Section 40(a)(i) is to protect the interest of the Revenue by ensuring that in respect of interest chargeable under the Act and payable outside India, the tax payable by the non-resident is either paid or deducted in cases where the non-resident does not have any agent in India from whom it can be recovered. From this point of view, it is immaterial whether the Revenue has received payment of the tax due either by a voluntary act on the part of the assessee or by initiation of the recovery proceedings against the assessee. It may also be observed that under the Act an involuntary payment of tax, whether by way of deduction at source or by way of recovery under the provisions of the Act, is regarded as tax paid. In this connection, we may refer to Section 199 of the Act which provides that any deduction made in accordance with the provisions of sections 192 to 194, Section 194A, Section 194B, Section 194BB, Section 194C, Section 194D and Section 195 of the Act and paid to the Central Government should be treated as payment of tax on behalf of the person from whose income the deduction was made. Similarly, in Section 219 of the Act, it is provided that any sum, other than a penalty or interest, paid by or recovered from any assessee as advance tax in pursuance of Part C of Chapter XVII shall be treated as payment of tax. In this context, reference may also be made to the provisions of Section 237 of the Act which provides that if any person satisfies the Income Tax Officer that the amount of tax paid by him or on his behalf or treated as paid by him or on his behalf for any assessment year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of the excess. It could not be the intention of Parliament to confine the powers of refund of the excess only in cases where the tax has been voluntarily paid and to deny such a power where tax has been recovered from the assessee. In our opinion, the aforesaid provision in Section 237 covers all cases where tax has either been paid voluntarily by the assessee in pursuance of a demand made by the Income Tax authorities or the amount of tax has been recovered from him by the process of recovery prescribed under law or has been deducted under the provisions of the Act and in all such cases, the assessee would be entitled to the

refund of the excess amount. This would show that for the purpose of refund u/s 237, tax recovered from the assessee is regarded as tax treated as paid by him. We are, therefore, of the opinion that the word "paid" as used in Sub-clause (i) of Clause (a) of Section 40 covers not only voluntary payments but also payments made otherwise, i.e., the amount recovered from the assessee under the provisions of the Act.

12. In the present case, we find from the order of the Appellate Assistant Commissioner that a sum of Rs. 2,05,265 was paid by the State Bank of India, Bombay, to the Department on March 30, 1970, out of the bank guarantees furnished by the assessee towards the assessee's liability to deduct the tax at source on payment to non-residents. From the order of the Appellate Assistant Commissioner, we further find that in their letter dated September 21, 1970, addressed to the Appellate Assistant Commissioner, the assessee had confirmed that they do not propose to object to the act of recovery already made from their guarantee, if the item of disallowance of interest paid to the non-residents is deleted from the assessment. In these circumstances, we are of the opinion that the Appellate Assistant Commissioner and the Tribunal were right in deducting the sum of Rs. 2,36,007 which was added to the income by the Income Tax Officer and since the assessee in their letter addressed to the Appellate Assistant Commissioner has expressed its desire not to object to the act of recovery made from the bank guarantee, we do not consider it necessary to go into the question as to whether the amount of interest that was paid by the assessee to the non-resident foreign banks was chargeable to tax or not and also the question as to whether the assessee should be regarded as the agent of the non-resident foreign banks u/s 163 of the Act.

13. We may now come to question No. 1 referred in Reference Application No. 116 of 1972-73 relating to the disallowance of expenses to the tune of Rs. 3,26,794 and Rs. 19,126. As pointed out earlier, the aforesaid expenses have been disallowed by the Tribunal on the ground that the same related to the period prior to the previous year relevant to the assessment year in question. Shri Aneja has submitted that the aforesaid expenses were incurred by the assessee in connection with the contract entered into by the assessee with the Oil and Natural Gas Commission and that the same were incurred during the period from September 13, 1963, to February 2, 1964, i.e., after the communication of the approval of the contract but prior to the execution of the formal contract. According to Shri Aneja, these expenses were in the nature of Revenue expenses and even though they related to the period prior to the previous year relevant to the assessment year in question, the said expenses could be claimed by the assessee. In support of the aforesaid submission, Shri Aneja has placed reliance on *Gustad Dinshaw Irani Vs. Commissioner of Income Tax, Bombay City*, *GAPPUMAL KANHIYALAL Vs. COMMISSIONER OF Income Tax, U.P. and V.P.*, and *Security Printers of India (P.) Ltd. Vs. Commissioner of Income Tax, Shri Surolia*, on the other hand, has submitted that the expenses in question have been rightly disallowed as the same were incurred during the period earlier

than the previous year relevant to the assessment year in question. In this regard, Shri Surolia has placed reliance on the decision of the Privy Council in CIT v. Basant Rai Takhat Singh [1933] 1 ITR 197.

14. In Basant Rai Takhat Singh's case, the Judicial Committee of the Privy Council has laid down that the allowance for any expenditure incurred must be an allowance for expenditure incurred in the year in respect of income, profits and gains forming the basis of the assessment arose. The principle laid down in this decision is, however, subject to the exception that in the case of a single venture, the expenditure incurred by the assessee in respect of that venture during prior years must be allowed while assessing the profits of that venture.

15. In Gustad Dinshaw Irani Vs. Commissioner of Income Tax, Bombay City, the assessee was a partner in several firms doing restaurant business in Bombay and during the course of the assessment for the assessment year 1951-52, the assessee had claimed deduction in respect of the ground rent and taxes paid in relation to the plot of land which was obtained by the assessee in 1946. The said expenses were disallowed by the Tribunal on the ground that they related to the years prior to 1950-51. The Bombay High Court disagreed with the Tribunal and held that the said expenses should have been deducted. The Bombay High Court has observed as under (p. 98) :

"With regard to the second question, a rather curious claim is put forward by the Taxing Department that the profits of this venture should be assessed without giving any relief to the assessee with regard to the expenses incurred in connection with this transaction prior to the year 1950-51. The sum of Rs. 1,770 that was paid for brokerage was allowed inasmuch as that amount was paid in the year of account, but the annual ground rent which the assessee paid in years previous to the year of account was disallowed on the ground that this expenditure was not incurred in the year of account and that contention was accepted by the Tribunal. In accepting this contention, the Tribunal, with respect, has overlooked the nature of a single venture in the nature of trade. In the case of a single venture, the profits become assessable only when that venture comes to an end and in this case the venture came to an end in the year of account. It was only then that the profits- could be ascertained and the profits subjected to tax. Therefore, the question that arose in the year of account was : What were the real profits from a commercial point of view which the assessee earned ? It is impossible to contend that the real profits were the amount actually realised by the assessee by the assignment of his right under the agreement with the municipality without taking into consideration the expenses that he had incurred prior to this assignment. If one were to ignore the expenses, then one would not arrive at the real profits which the assessee earned. Mr. Joshi on behalf of the department says that under the Income Tax Act only those expenses can be deducted u/s 10 which were incurred in the previous year and if any expense was not incurred in the previous year but was incurred in previous years, then that expenditure is not a legitimate deduction u/s 10. That, in our opinion, is a

wrong approach to the question. What we have to consider is what are the commercial profits, the real profits which have been earned in the year of account and which are liable to tax, and if those real profits can only be arrived at after taking into consideration the expenditure incurred in the prior years, then even though the expenditure may not strictly fall within the ambit of Section 10, for the purpose of assessing the real profits, credit must be given to the assessee in respect of the expenditure incurred in the prior years."

16. In *GAPPUMAL KANHIYALAL Vs. COMMISSIONER OF Income Tax, U.P. and V.P.*, the assessee was carrying on money-lending business and it had incurred certain expenses in litigation for the recovery of a sum of money advanced by it on mortgage between the years 1939 and 1943 in the accounting year 1944-45. A Division Bench of the Allahabad High Court has held that the assessee was entitled to deduct the expenses in the account year though they were incurred in earlier years, because for the purposes of calculation of Income Tax, they could be considered to be expenses incurred in the accounting year on the basis of the regularly employed method of the assessee's accounting on the basis of which income, profits and gains were required to be computed u/s 13 of the Indian Income Tax Act, 1922. In that case, the High Court has taken note of the decision of the Privy Council in *Basant Rai Takhat Singh's case* [1933] 1 ITR 197 referred to by Shri Surolia.

17. In *Security Printers of India (P.) Ltd. Vs. Commissioner of Income Tax*, the assessee was a limited company. It was incorporated on April 6, 1957. For the assessment year 1958-59, the assessee claimed deduction of certain expenses. Some of these expenses related to the period prior to the incorporation of the assessee-company. The said expenses were in the nature of travelling expenses of the directors to explore possibilities of business, for procuring import licence, to collect, details or secure orders and to study techniques of security printing. The said expenses were disallowed by the Income Tax Officer on the ground that these were pre-incorporation expenses of the company and were capital in nature. The Appellate Assistant Commissioner held that the expenses were all of a revenue nature and as they had been incurred by the promoters of the assessee-company in connection with the business which was subsequently taken over by the company in its incorporation and they were allowable as business expenses. The Tribunal, however, disallowed a part of expenses on the ground that they were capital expenses. The High Court disagreed with the Tribunal that the expenses were capital in nature and held that the expenditure incurred by a businessman or his agent on foreign tours to acquaint himself with new and modern techniques is revenue in character. The High Court observed that the main consideration which has got to weigh with the court is whether the expenditure was a part of the process of profit-making, or it was designed to bring into existence a new asset.

18. In the present case, the details of the expenses have been mentioned in the annexure to the Reference Application No. 116 of 1972-73 which was submitted

by the assessee before the Tribunal. This would show that the expenditure of Rs. 3,26,783.76 included, (i) travelling expenses for trips from Paris to India and back and for trips in France in the interests of securing contracts by negotiations and for collecting information relevant thereto, (ii) salaries and allowances (social security), etc., for the personnel employed on work relating to the contract including the collection of materials, setting up of the "Testing of Machinery by the IFP Engineers", (iii) expenses charged by the banks for the ways and means arrangements connected with the procurement of materials for the contract, (iv) expenses on the transportation and collection of materials/ machineries required for the contract, (v) expenses incurred for setting up of the rig and its being tested by the IFP Engineers as enjoined in the terms of the contract, and (vi) expenses incidental to the contract including those for bringing the materials to the required specifications, insurance charges, maintenance of personnel, rent of godowns, entertainment, handling of materials, P & T charges, consumables and spares and expenses in India during trips. The expenses amounting to Rs. 19,126 claimed by the assessee relate to the expenditure incurred on the imported spare parts consumed prior to the shipment of equipment to India. It may be mentioned that the Income Tax Officer in his order of assessment has observed: "It is clear that all these preliminary expenses were incurred in connection with the contract". The Appellate Assistant Commissioner has agreed with the aforesaid finding of the Income Tax Officer. The only ground on the basis of which the said expenses were disallowed by the Income Tax Officer as well as the Appellate Assistant Commissioner was that the same would have to be capitalised and added to the cost of the assets for depreciation purposes. In this regard, it may be stated that although the previous year relevant to the assessment year 1966-67 covered the period from September 10, 1964 to December 31, 1965, the Income Tax Officer has allowed the deduction of expenditure for the period subsequent to February 16, 1964, i.e., from the date of execution of the contract. In other words, the Income Tax authorities have allowed the deduction of expenditure for a period beyond the previous year relevant to the assessment year in question. If the reason given by the Tribunal that the said expenditure related to the period prior to the previous year relevant to the assessment year in question is to be applied, then the expenditure for the period from February 16, 1964, till September 10, 1964, should also have been disallowed. We are, however, of the opinion that the Tribunal was not right in disallowing the aforesaid expenditure that was claimed by the assessee on the ground that it related to the period prior to the previous year relevant to the assessment year in question. In the present case, the only income that was derived by the assessee in India was from the contract which was entered into by it with the Oil and Natural Gas Commission. The aforesaid contract was in the nature of a single transaction and the expenditure that was claimed by the assessee has been found to be incurred in connection with that contract. In our view, the Income Tax authorities have erred in holding that the said expenditure should be treated as expenditure of capital nature. The said expenditure was a part of the process of profit-making by the assessee in the contract which was

entered into by it with the ONGC and without incurring the said expenditure, the assessee would not have been able to obtain the said contract and to perform it. The aforesaid expenditure of Rs. 3,26,794 and Rs. 19,126 claimed by the assessee should have been allowed and it has been wrongly disallowed by the Income Tax authorities.

19. We may now come to question No. 2 of Reference Application No. 116 of 1972-73 relating to the depreciation claimed by the assessee on the furniture which was part of the camp equipment. The Appellate Assistant Commissioner allowed depreciation at the rate of 15 per cent. on the view that the camp equipment consisted of temporary wooden frames, tents and wooden furniture used for the purposes of providing lodging facilities to the members of its staff and the staff of ONGC in accordance with the agreement as there were no permanent houses for stay of the staff in the desert area where drilling operations were being carried on. According to the Appellate Assistant Commissioner, the camp equipment and furniture were being used for the purpose of boarding house provided to the staff and, therefore, depreciation at the rate of 15 per cent. should be allowed. The Tribunal has disagreed with the aforesaid finding of the Appellate Assistant Commissioner and has held that the camp equipment used for the purpose of providing lodging facilities to the members of the staff do not fall under the category of "furniture in boarding house". Shri Aneja has assailed the aforesaid finding recorded by the Tribunal and has submitted that on the facts and in the circumstances of the case, the Appellate Assistant Commissioner was justified in holding that the furniture and equipment that was being used to provide lodging facilities to the staff as well as to the staff of ONGC should be treated as furniture in a boarding house for the purpose of depreciation and that it is covered by item 11(2) of Part I of Appendix I to the Income Tax Rules, 1962 ("the Rules"). Item 11(2) prescribes the rate at which the depreciation is admissible for furniture and fittings. It prescribes general rate of 10 per cent. under Clause (1) and Clause (2) depreciation at the rate of 15 per cent is prescribed in respect of "furniture and fittings used in hotels, restaurants, boarding houses, schools, colleges and other educational institutions, libraries, welfare centres, meeting halls, cinema houses, theatres and circuses and for furniture and fittings let out on hire for use on the occasion of marriages and similar functions." The reason why a higher rate of 15 per cent. has been prescribed for the furniture and fittings referred to in Clause (2) appears to be that the said furniture and fittings are to be used in places where it is likely to be put to greater wear and tear. In the present case, as pointed out by the Appellate Assistant Commissioner, the assessee was required to conduct drilling operations in a desert area and there were no permanent houses for the stay of staff of the assessee and the ONGC near the drilling site. In order to provide accommodation to members of the staff and the staff of the ONGC, the assessee had to make arrangements for lodging facilities at the site and the camp equipment and furniture that were provided by the assessee at the site and was being used for the purpose of providing lodging to the staff in the form

of temporary boarding house and it was thus covered by Clause (2) of Item II of Appendix I. The Appellate Assistant Commissioner was, therefore, justified in holding that depreciation should be allowed on the camp equipment and furniture at the rate of 15 per cent. and the Tribunal was not right in reducing the rate of depreciation from 15 per cent. to 10 per cent.

20. In the result, we answer the questions referred to us as under :

Reference Application No, 111 of 1972-73 :

Question No. 1: Affirmative. The Tribunal was right in holding that the tax was paid by the assessee under the provisions of Part B of Chapter XVII and further that the assessee was entitled to deduction of interest amounting to Rs. 2,36,007.

Questions Nos. 2 and 3 : Need not be answered in view of the answer given to question No. 1.

Reference Application- No. 116 of 1972-73 :

Question No. 1: Negative. On the facts and in the circumstances of the case, the Tribunal was not justified in disallowing the expenditure of Rs. 2,26,794 and Rs. 19,126 incurred before February 7, 1984, from the total income for the assessment year 1966-67.

Question No. 2: Affirmative. The furniture used for boarding and lodging constitutes furniture used for a boarding house in which depreciation was allowable as per the Rules at the rate of 15 per cent

21. On the facts and in the circumstances of the case, the parties are ordered to bear their own costs.