

(2002) 11 DEL CK 0077

In the Delhi High Court

Case No : Income Tax A. No. 242 of 2002

Commissioner of Income Tax

APPELLANT

Vs

Orissa Cement Ltd.

RESPONDENT

Date of Decision : 01-11-2002

Acts Referred:

Income Tax Act, 1961 — Section 37

Citation : (2003) 179 CTR 354 : (2003) 260 ITR 626 : (2004) 135 TAXMAN 64

Hon'ble Judges : Sharda Aggarwal, J;D.K. Jain, J

Bench : Division Bench

Advocate : R.D. Jolly, for the Appellant; Harihar Lal and Radha Rangaswami, for the Respondent

Judgement

D.K. Jain, J.—This appeal by the Revenue u/s 260A of the Income Tax Act, 1961 (for short "the Act"), is directed against the order dated January 22, 2002, passed by the Income Tax Appellate Tribunal (for short "the Tribunal") in I. T. A. No. 513/Delhi of 1993, pertaining to the assessment year 1987-88.

2. Briefly stated the background facts, giving rise to the present appeal, are :

The assessed, a public limited company, is engaged in the business of manufacturing cement refractories and allied products at Rajgangpur, Orissa. During the course of assessment proceedings for the assessment year 1987-88, the Assessing Officer noticed that the assessed had claimed a sum of Rs. 62,09,542 as commission paid to Ceramic Sales, its sole selling agents for sale of refractories. The said agents were also responsible for realisation of the sale proceeds. He also noticed that the assessed had also claimed as revenue expenditure Rs. 78,22,545, paid by it as interest to various financial institutions. On being asked to explain the nature of these expenses, it was explained by the assessed that similar expenses on commission paid to the said sole selling agents was being allowed in the past and in so far as the claim of the other amount is concerned, it was payment of interest on the loans it had raised from various financial institutions for undertaking modernisation of the existing

cement plant. Not being satisfied with the Explanation and following the order for the assessment year 1985-86, the Assessing Officer came to the conclusion that the commission having been paid without obtaining an approval of the Central Government, it was not laid out for business necessity. He accordingly disallowed the commission paid by the assessed. In so far as the interest paid to the financial institution was concerned, the same was held to be capital expenditure as according to him, the assessed was switching over to a different technology altogether.

3. Aggrieved, the assessed, preferred an appeal to the Commissioner of Income Tax (Appeals). The Commissioner (Appeals), relying on the appellate order for the assessment year 1985-86, deleted the addition of Rs. 62,09,542 but in so far as the claim of interest as revenue expenditure was concerned, the commissioner affirmed the view taken by the Assessing Officer.

4. The Revenue as well as the assessed took the matter in further appeal to the Tribunal. In so far as the disallowance of commission paid by the assessed was concerned, the Tribunal again relied on its earlier order and upheld the view taken by the Commissioner (Appeals). However, on the second issue, the Tribunal was of the view that if a loan is taken for expansion or modernisation, of a continuing business then interest paid thereon is to be allowed as revenue expenditure. Thus, finding that in the present case the interest had been paid on the loan, raised from various financial institutions, for the expansion and modernisation of the existing plant, the Tribunal held that the said expenditure was revenue in nature. Hence, the present appeal.

5. The following questions, which are stated to be substantial question of law, have been formulated :

"A. Whether the Tribunal was correct in law in holding that the expenditure of Rs. 78.22 lakhs on account of interest paid to the financial institution is revenue in nature ?

B. Whether the agreement between the assessed and Ceramic Sales is a genuine agreement ?

C. Whether the Tribunal has erred in allowing deduction of Rs. 62,09,542 the commission paid to sole selling agents, Ceramic Sales, on sale of refractories ?

D. Whether the order of the Tribunal is perverse both in law and on merits ?

E. Whether the Tribunal has correctly interpreted the provisions of Explanation 8 of Section 43(1) of the Income Tax Act ?"

6. As regards the question of disallowance of commission, claimed to have been paid by the assessed to Ceramic Sales, it is very fairly stated by Mr. R.D. Jolly, learned counsel for the Revenue, that in respect of the assessment year 1985-86, the appeal filed by the Revenue (I. T. A. No. 82 of 2001) has not been entertained. However, in so far as the question of allowance of interest

amounting to Rs. 72,51,277 paid on the loans raised is concerned, Mr. Jolly would urge that it has to be capitalised because the assessed has in fact changed the entire process of manufacturing of cement. It is also pointed out that in its books of account the assessed had in fact treated the said expenditure as capital expenditure. In support of his stand, learned counsel has relied on the decision of the apex court in Challapalli Sugar Ltd. Vs. The Commissioner of Income Tax, A.P., Hyderabad, It is thus asserted that a substantial question of law does arise from the order of the Tribunal. Mr. Harihar Lal, learned counsel for the assessed, on the other hand, has submitted that the issue sought to be raised by the Revenue already stands concluded by a decision of this court-in Commissioner of Income Tax Vs. Dalmia Cement (Bharat) Ltd., , wherein the fact situation and the legal issue were identical.

7. We find substance in the contention of learned counsel for the assessed. In Commissioner of Income Tax Vs. Dalmia Cement (Bharat) Ltd., , the assessed had raised funds for modernisation and improvement of productivity of the existing business. Having regard to the finding of the Tribunal that the loans raised by the assessed were utilised for modernisation and improvement of productivity with reference to the existing business, this court had upheld the view taken by the Tribunal that the said expenses were in the nature of revenue expenditure. As noted above, in the present case also, the Tribunal has recorded a finding, which is essentially a finding of fact, that the loan amount was used for modernisation and expansion of the existing units. In view of the said finding, the ratio of the decision in Commissioner of Income Tax Vs. Dalmia Cement (Bharat) Ltd., squarely applies on the facts in hand. The issue being no longer rest integra, no question of law much less a substantial question of law, survives for our consideration.

8. The appeal is accordingly dismissed.