

**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT
JAIPUR**

D.B. Income Tax Appeal No. 91 / 2006

Commissioner Of Income Tax Jaipur

-----Appellant

Versus

M/S Modern Threads (I) Ltd. Jaipur

-----Respondent

Connected With

D.B.INCOME TAX APPEAL No. 432 / 2008

Commissioner Of Income Tax Jaipur

-----Appellant

Versus

M/S Modern Threads (I) Ltd. Jaipur

-----Respondent

D.B. Income Tax Appeal No. 473 / 2008

C I T

-----Appellant

Versus

M/S Modern Syntex

-----Respondent

Connected With

D.B.INCOME TAX APPEAL No. 477 / 2008

CIT

-----Appellant

Versus

M/S Modern Syntex

-----Respondent

D.B.INCOME TAX APPEAL No. 565 / 2008

CIT

-----Appellant

Versus

M/S Modern Syntex

-----Respondent

For Appellant(s) : Mr. R.B. Mathur

For Respondent(s) : Ms Parinitoo Jain

HON'BLE MR. JUSTICE K.S. JHAVERI

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

Judgment

04/01/2017

1. By way of these appeals, the Department has challenged the judgment and order of the Tribunal whereby the tribunal while considering the matter had confirmed the order of C.I.T. (Appeal) and has allowed the appeal preferred by the assessee.

2. This court while admitting the appeals framed the following substantial question of law:

Appeal No. 91/2006

Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in holding that the expenditure of Rs. 4,56,10,500/- towards interest and financial / bank charges was revenue expenditure though the said charges were pre-operative in nature and paid to the financial institutions against the loan obtained for installing the unit?

Appeal No. 432/2008

“(1) Whether in the facts and circumstances of the case the ITAT and CIT (A) were justified in law and have acted perversely in holding the expenditure of Rs. 1,03,70,000/- towards interest & financial / bank charges as revenue expenditures when the said expenditures were pertaining to interest and bank charges which were pre-operative in nature and were paid to the financial institutions against loan obtained for installing the unit and were enduring in nature?

(ii) Whether in the facts and circumstance of the case the ITAT and CIT(A) were justified in law and

have acted perversely in reducing and restricting the additions towards advertisement expenditure which were related to public issue and were capital in nature?

(iii) Whether in the facts and circumstances of the case the ITAT and CIT(A) were justified in law and have acted perversely in deleting the additions of Rs. 20.00 lakhs towards excess processing loss which was much higher to previous year and the Assessing Officer has made additions after applying provisions of sec. 145 of the Act ? "

Appeal No. 473/2008

"(1) Whether in the facts and circumstances of the case, the ITAT and CIT (A) were justified in allowing the expenditure of interest payment made towards interest on loans borrowed to finance the cost of its expansion scheme treating it as revenue expenditure?

(II) Whether in the facts and circumstances of the case, the ITAT and CIT(A) were justified in law and have acted perversely in holding the expenditure as revenue expenditure allowable deductions u/s 37(1) when the said expenditure were pertaining to convertible debentures to be converted into shares issued for raising capital for unit which has not started production and was in the process of installation?"

Appeal No. 565/2008

"(i) Whether in the facts and circumstances of the case, the ITAT and CIT(A) were justified in law and have not acted perversely in holding the expenditure towards interest and financial/ Bank charges as revenue expenditures when the said expenditure were pertaining to interest and bank charges which were pre operative in nature and were paid to the financial institution against loan obtained for installing the unit and were enduring the nature?

(ii) Whether in the facts and circumstances of the case, the ITAT and CIT(A) were justified in law and have not acted perversely in allowing the expenditure incurred in earlier years treating it as deferred revenue expenditures?"

Appeal No. 477/2008

1. Whether in the facts and circumstances of the case, the ITAT and CIT(A) were justified in law and

have not acted perversely in holding the expenditure towards interest and financial/ bank charges as revenue expenditure when the said expenditure were pertaining to interest and bank charges which were pre-operative in nature and were paid to the financial institution against loan obtained for installing the unit and were enduring the nature?

2. Whether in the facts and circumstances of the case, the ITAT and CIT(A) were justified in allowing the expenditure of interest payment made towards interest on loans borrowed to finance the cost of its expansion scheme treating it as revenue expenditure?

3. Since common questions of law are involved in all these appeals, all these appeals are decided by this common judgment.

4. The brief facts of the case are that the assessee return declaring Nil was filed by the assessee on 29.11.1996. order u/s 143(3) was passed by the AO on 10.03.1999 determining the loss at Rs. 20,12,63,256/-. During the course of assessment proceedings the AO observed that assessee has claimed deduction of Rs. 33,20,47,371/- u/s. 36(1) (iii) being payment made towards interest on loans borrowed to finance the cost of its expansion schemes. The AO held these expenses in the nature of capital expenditure and disallowed the claims. The assessee also claimed deduction of Rs. 35,92,000/- u/s 37 being payment incurred on public issue. The AO held that these expenses cannot be treated as revenue expenditures and as such disallowed the same. The AO also disallowed the expenditure claimed by the assessee of Rs. 12,57,460/- as the same pertained to earlier years. The AO observed that even after affording ample opportunities no evidence to prove that the expenditures were

crystallized during the year was submitted by the assessee and as such the same were disallowed.

5. Learned counsel for the appellant Mr. Mathur contended that the amendment in explanation which was added to proviso 36(1) (iii) of the Income Tax Act, reads as under:

"The amount of the interest paid in respect of capital borrowed for the purposes of the business or profession (whether capitalized in the books of account or not); for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction."

6. In view of the decision of Allahabad High Court in Commissioner of Income Tax & anr. vs. Dhampur Sugar Mills Ltd.

Reported in (2014) 360 ITR 82(All) observed as under:-

"(5) Whether on the facts and in the circumstances of the case, the Tribunal is justified in law in confirming the order of the CIT (A) who deleted Rs.2,58,78,987/-disallowed by the A.O on account of interest paid against loan which were utilized for setting up new units treating the same as revenue expenditure instead of capital expenditure?"

"We find that the proviso is explanatory in nature inasmuch as in computing the income the deductions are for the purposes of business and profession. Where a new business is set up or an existing business is expanded, the amount borrowed for such purposes enures to the assessee with enduring benefit. The assessee, therefore, could not treat it on such borrowed capital as revenue expenses."

7. The amount is to be deducted retrospectively and the question is required to be answered in favour of the Department.

8. However, learned counsel for the respondent-assessee has pointed out that the issue is by and large covered by the decision

of this court in Commissioner of Income Tax Vs. M/S Modern Danim Ltd., D.B. Income Tax Appeal No.94/2006 decided on 20.09.2016 holding as under:-

5. However, in view of the decision of this Court in Secure Meters Ltd. [2010] 321 ITR 611 (Raj) (supra) more particularly holding as under:

"At this stage it was contended by the learned Counsel for the Revenue, that a distinction should be drawn between the convertible and non-convertible debentures, inasmuch as if the debenture is converted into shares, then it partakes the character of capital, and in that event, the expenditure, and would not be revenue expenditure, and would be capital expenditure. Learned Counsel for the assessee informs, that though it has not come on record so far, but as a matter of fact the debentures issued were of convertible nature. Then, the argued, relying upon the judgment of Calcutta High Court in CIT v. East India Hotels Ltd. [2001]252ITR860(Cal), that the expenditure incurred, even in raising loan by convertible debenture would also be admissible as revenue expenditure. The Calcutta High Court had adopted the reasoning, that conversion of debentures results into repayment of loan and issuance of shares. This is one aspect of the matter. In our view, the other more important aspect of the matter is, that the Hon'ble Supreme Court in Inda Cements case (supra) has clearly excluded this aspect from consideration, by holding, that it is irrelevant to consider the object, with which the loan was obtained.

Admittedly the debentures when issued is a loan, and therefore, whether it is convertible, or non-convertible, does not militate against the nature of the debenture, being loan, and therefore, the expenditure incurred would be admissible as revenue expenditure."

6. Since the SLP against the said judgment also stands dismissed, in that view of the matter, the same decision is binding on the parties, therefore, both the questions are answered in favour of assessee and against the Department.

9. Another decision of this court in the case of Commissioner of Income Tax Vs. Hindustan Zinc Limited (2004) 269 ITR 369 (Rajasthan) and decision of the Supreme Court in Commissioner

of Income Tax Vs. Monnet Industries Ltd. {2013} 350 ITR 304 (SC).

10. We have heard learned counsel for the parties and considered their arguments.

11. It is true that contention which has been raised is considered by the Allahabad High court, however, in our view and looking to the explanation added subsequently, the view taken by the Rajasthan High court in Hindustan Zinc Ltd. (supra) is required to be considered.

12. In view of the law declared in earlier judgment, we decide the issues in favour of the assessee. Even otherwise explanation to proviso itself has not made it retrospective, it is desirable to make it prospective only.

13. Accordingly, the issues are answered in favour of assessee and against the Department.

The appeals are dismissed.

(VINIT KUMAR MATHUR)J.

(K.S. JHAVERI)J.