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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 12.01.2015

+ **ITA 42/2000**

OSWAL AGRO MILLS LTD ..... Appellant

Through: Mr. Prakash Kumar, Adv.

versus

COMMISSIONER OF INCOME TAX ..... Respondent

Through: Mr. Rohit Madan and Mr. Ruchir  
Bhatia, Advs.

**CORAM:**  
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**  
**HON'BLE MR. JUSTICE R.K.GAUBA**

**MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)**

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1. The following questions of law were framed in the present appeal by order dated 12.05.2000.

(i) *Whether the Income Tax Appellate Tribunal is correct in law and on facts in upholding this disallowance of an amount of ₹1, 60, 00,064/-, being a contractual trading liability incurred in the nature of additional cost of material, holding the same to be a liability contingent on the happening of an event and thus not an allowable deduction while computing the income for the instant assessment year?*

*(ii) Whether the Income Tax Appellant Tribunal is correct in law and on facts in holding that the liability of ₹1,60,33,064/- claimed by the appellant was not allowable under Section 43B of the I.T.Act.*

*(iii) Whether the Income Tax Appellate Tribunal is correct in law and on facts in upholding the disallowance of a sum of ₹1,19,07,989/- being the loss incurred on account of devaluation of rupee against the US Dollars, holding the same to be a fictitious and notional loss?*

2. The assessee is manufacturing and trading industrial hard oils, edible oils, marine products, emergency lighting units and soaps etc and entered into an agreement with one overseas processors Shahji International Pvt. Ltd. and Oswal Soap and Allied Industrial Pvt. Ltd. for purchase of imported Palm Sterline Fatty Acid. These agreements with the said importers were identically worded. The imported material was to be purchased by the assessee and the CIF price, custom duty, clearance charges etc., and 3% of the total cost. In terms of Clause 11 any liability arising after sale of imported materials in respect of customs, excise, penalty, sales tax etc., was payable by the assessee/appellant and was to be included as landed cost of imported material. The Revenue for the relevant years had disallowed sum of ₹1,60,33,064/- on the ground that this was not permissible under Section 43B of the Income Tax Act.

3. The matter was carried out before Income Tax Appellate Tribunal

(ITAT) which upheld the revenue's contentions. It is under these circumstances that the assessee appealed to this Court. The first two questions pertain to the applicability of Section 43B and the permissibility of the deduction claimed under the circumstances of the case.

4. At the outset, the learned counsel for the parties submitted that the question does not survive in view of the judgment titled as *Oswal Agro Mills Ltd. vs. Commissioner of Income Tax* ITA No.41/2000 decided on 07.02.2014. This Court had discussed the relevant case law on the subject and especially relied upon the judgment of the Supreme Court in *Kedarnath Jute Manufacturing Co. Ltd. v. CIT: (1971)82 ITR 363 (SC)*, *Calcutta Co. ltd. v. CIT: (1959) 37 ITR 1 (SC)* and the judgment reported as *Bharat Earth Movers v. CIT: (2000) 245 ITR 428 (SC)*. It is held that the amount is not an ascertained liability. The Court held that such liability is contingent upon an uncertain fact and, therefore, deduction claimed by the assessee was not permissible in view of Section 43B of the Income Tax Act. This Court is governed by the said precedent and accordingly answers question Nos. 1 and 2 in the affirmative and against the assessee.

5. The third question i.e. disallowance in respect of sum of ₹ 1,19,07,989/- being a loss incurred on account of devaluation of Rupee is governed by the ruling of this Court in *CIT vs. Woodward Governor India Pvt. Ltd. (2009) 312 ITR 254 (SC)*. In accordance with the ruling of the Supreme Court in that judgment the loss incurred is clearly admissible and the disallowance made by the Revenue was not justified. The question has to be again answered in the affirmative, but in favour of the assessee.

6. In view of the above, and for the foregoing reasons, the appeal is partly allowed.

**S. RAVINDRA BHAT**  
**(JUDGE)**

**R.K.GAUBA**  
**(JUDGE)**

**JANUARY 12, 2015**

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