**<u>Reserved</u>**

**<u>Court No. - 33</u>**

**Case :-** INCOME TAX APPEAL No. - 195 of 2005

**Assessment Year 1995-96**

**Appellant :-** Commissioner Income Tax
**Respondent :-** M/S Translam Ltd.
**Counsel for Appellant :-** Rk Upadhyay
**Counsel for Respondent :-** Suyash Agrawal

**With**

**Case :-** INCOME TAX APPEAL No. - 568 of 2011

**Assessment Year 1997-98**

**Appellant :-** The Commissioner Of Income Tax & Another
**Respondent :-** M/S Translam Limited
**Counsel for Appellant :-** A.N. Mahajan

**With**

**Case :-** INCOME TAX APPEAL No. - 591 of 2011

**Assessment Year 1996-97**

**Appellant :-** Commissioner Of Income Tax, Meerut And Another
**Respondent :-** M/S Translam Limited.
**Counsel for Appellant :-** S.C.,A.N.Mahajan,B.Agrawal,R.K.Upadhyaya
**Counsel for Respondent :-** R.R. Agrawal

**<u>Hon'ble Tarun Agarwala,J.</u>**
**<u>Hon'ble Dr. Satish Chandra,J.</u>**

1. All the three appeals have been filed by the Department against the consolidated impugned order dated 26.8.2004, passed by the Income Tax Appellate Tribunal, New Delhi in I.T.A. Nos.2518,

2519 & 2520(Del) of 2001 for the Assessment Year 1995-96; 1996-97 & 1997-98.

2. On 1.10.2007, a coordinate Bench has admitted the appeals on the following substantial questions of law:-

> *"(i) Whether on the facts and in the circumstances of the case, the I.T.A.T. have erred in law in holding that the unabsorbed business loss of the Unit namely M/s Meerut Oil and Chemicals (Pvt.) Ltd. Could be set off against the income of other Unit M/s Translam Ltd. and the said finding is not against the proviso below Clause (i) of the Sub Section (1) of the Section 72 of the Act?*
>
> *(ii). Whether on the facts and in the circumstances of the case, the I.T.A.T have erred in holding that the interest on borrowed capital used for Capital-work-in progress was deductible and the said finding is not against the Explanation 8 to Section 43 of the Act?*
>
> *(iii). Whether on the facts and in the circumstances of the case, the I.T.A.T. have erred in deleting the trading addition of Rs.98,23,891/- made by the A.O. one the basis of defects in the books of account and comparable case?"*

3. We have heard the learned counsel for the parties at length and perused the material available on record.

4. The facts related to the filing of the appeals are that the assessee company was incorporated on 29.11.1988. The assessee company took over the assets and liabilities of M/s Meerut Oil and Chemicals (Pvt.) Limited, for consideration of Rs.68 lakhs. It started commercial production of edible refined oil

during the financial year 1992-93. As there was loss, so, the Unit was leased out to M/s Ratan Fats Pvt. Limited, as per the agreement dated 19.11.1993 @ of Rs.1,12,500/- per annum. On 31.8.1994, the assessee company has entered into an agreement with M/s Mohit Kumar Jain and sons for purchase of assets, for consideration of Rs.1.24Cr.

5. But before that dispute is regarding dis-allowances of the set off of brought forward losses and unabsorbed depreciation, against the business income arising from the assessee Unit.

6. However, it may be mentioned that the jurisdictional High Court in the case of ***Commissioner of Income Tax Vs. Ganga Corporation Asbestos P. Ltd. [2014] 366 ITR 582 (All)*** has observed that:-

> *"In order to get the benefit of set off or carry forward of business loss of earlier years against the income of the relevant year the business must be continued. For finding out if it is the same business the decisive test is unity of control, common management and common control of business and not the nature of the two lines of the business."*

7. In the instant case, production of edible oil unit at Gajraula was temporarily suspended, because of losses and as a business expediency, it was leased out. However, lease was terminated before due date and the production was reverted back, but unfortunately, because of loss it was leased out

again. The temporary suspension of business does not convert the 'business income' into 'income from other sources'.

8. Further, it appears that the A.O. has already treated lease rent as **business income.** When it is so then the set off of business loss deserved to be allowed against the income arising under the head “Business” in respect of the two units. The income derived from leasing of commercial business assets, resulted in commercial income taxable under the head “Business”. Change in the mode and manner of deriving income by exploiting commercial assets either by self or by leasing the same would not change the character of income and such income would continue to be the income under the head “Business income”. The authorities below have discussed a number of case laws to this effect and the same are not required to be repeated.

9. The A.O. has already assessed the lease rent under the head of **Business income**. Hence, the carry forward and set off unabsorbed business losses and depreciation are permissible against lease rental income.

In view of the above, we uphold the order of the appellate authorities.

10. The next grievance of the Department (question no.2) is related to the addition of Rs.3,88,574/- pertaining to the interest on borrowed capital.

11. After hearing both the parties and on perusal of material available on record, it appears that the assessee has borrowed some funds for expansion of the existing business, on which interest was paid.

12. The A.O. disallowed the funds by observing that the funds were not utilized for the revenue expenditure. But both the appellate authorities have allowed the claim by observing that the interest on borrowed funds for acquiring capital asset is also an allowable deduction under section 36(i)(iii) of the I.T. Act.

13. Considering the totality of the facts and circumstances of the case, we are of the view that the borrowed funds was utilized for expansion of the business and the interest paid thereupon is allowable. The nature of utilization of funds makes no difference as during the assessment year under consideration, no new Unit was started by the assessee.

14. In view of the above discussions, the orders of the appellate authorities are hereby sustained.

15. The next grievance of the Department (question no.3) is pertaining to the addition of Rs.9,82,389/-

(wrongly mentioned in the substantial questions as Rs.9,82,3891/-) regarding the trading result.

16. After hearing both the parties and from perusal of the record, it appears that the A.O. has made the addition by observing that the G.P. rate was lower in comparison to the earlier years. But the fact remains that in the earlier years, the excise duty was separately credited to excise duty payable account, whereas, during the assessment year under consideration, the excise duty is included in the sale price. If the element of excise duty is excluded, the G.P. rate during the year under consideration, comes to 17.4% as compared to 16.69% of the last year. No defects in the books were pointed out by the A.O..

17. In view of above, we find no reason to interfere with the impugned orders passed by the appellate authorities. The same are hereby sustained along-with the reason mentioned herein.

18. The answer to the substantial questions of law is in favour of the assessee and against the Department.

19. In the result, all the three appeals filed by the Department are dismissed.

**Order Date :-** _*17*__/__*09*___2014
Dev/-

(Dr. Satish Chandra,J.) (Tarun Agarwala,J.)