IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 435/2007

COMMISSIONER OF INCOME TAX ..... Appellant

Through Mrs. P.L. Bansal, Adv.

versus

DALMIA CEMENT BHARAT LTD. ..... Respondent

Through Mr.R.M. Mehta with Ms. Radha

Rangaswamy, Advs.

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE V.B. GUPTA

O R D E R

02.04.2008

1. Admit.

2. After hearing learned counsel for the parties, the following substantial questions of law are framed

for consideration—

"1. Whether the Tribunal was correct in law in deleting the disallowance amounting to Rs. 57,82,010

on account of alleged payment made to field organizers/sales promoters for organizing sales of

non-levy cement ?

2. Whether the Tribunal was correct in law in not allowing depreciation on assets relating to water

works, water installation and water distribution system forming part of the building @ 10 per cent as

against the claim made by the assessee at 25 per cent ?

3. Whether the Tribunal was correct in law in allowing the assessee to reduce the amount of Rs.

2,87,29,151 realized on account of higher free sale quota under the sugar incentive scheme holding the

same as capital receipt ?

4. Whether the Tribunal was justified in law in holding that the expenditure of Rs. 25,80,000 incurred

by the assessee on total quality management project was revenue in nature as no new asset was brought

into existence by the assessee ?"

3. Learned counsel for the Revenue has also raised the following two questions of law :

1. Whether the Tribunal was correct in law in allowing the assessee depreciation on the enhanced cost

of assets due to increase in liability on account of foreign exchange rate fluctuation on the last date of

the accounting year ?

2. Whether the Tribunal was correct in law in holding that the sales-tax was not to be included in total

turnover while computing deduction under s. 80HHC of the Act ?

4. Insofar as first additional question is concerned, the admitted position is that in view of the decision

of this Court in CIT vs. Woodward Governor India (P) Ltd. (2007) 210 CTR (Del) 354 : (2007) 294

ITR 451 (Del) , no substantial question of law arises.

5. Insofar as second additional question is concerned, the admitted position is that in view of the

decision of the Supreme Court in CIT vs. Lakshmi Machine Works (2007) 210 CTR (SC) 1 : (2007) 290

ITR 667 (SC) , no substantial question of law arises.

6. To be listed along with IT Appeal No. 434 of 2007.

7. Filing of paper books is dispensed with.

MADAN B. LOKUR, J

V.B. GUPTA, J

APRIL 02, 2008