

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

+ **ITA No.158/2006**

% *Date of Decision: 27.10.2010*

The Commissioner of Income Tax,
Delhi (Central-III)

.....Appellant

through : Mr. N.P. Sawhney

VERSUS

M/s. Oswal Agro Mills Ltd.

.....Respondent

through: Mr. C.S. Aggarwal,
Sr. Advocate with
Mr. Prakash Kumar

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE SURESH KAIT

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (Oral)

1. This appeal was admitted on the following question of law:

“Whether the Income Tax Appellate Tribunal was correct in law in allowing the expense of Rs.24,19,840/- claimed by the Assessee towards payment of premium for redemption of non-convertible secured debentures?”

2. This question has arisen under the following circumstances:-

3. The respondent assessee herein had issued 13.5% secured redeemable non-convertible debentures (hereinafter referred to as ‘NCDs’). The debentures were to be redeemed, after a period of five years, as a premium of ₹ 5 per debenture. These debentures were issued some years ago and they were redeemed in the assessment year in question, i.e., assessment year 1997-98.

The premium of ₹ 5 per debenture was paid along with the face value of these debentures. Total premium paid in this manner, in the assessment year in question, worked out to ₹30,24,800/-. The assessee claimed deduction of this amount in the income-tax return filed by it. The Assessing Officer, however, was of the view that the deduction was not allowable in full as the same was required to be spread over the total period of debentures, i.e., five years. Therefore, he allowed only 1/5th of the aforesaid amount thereby disallowing claim to the extent of ₹24,19,840/-. The assessee preferred appeal against the aforesaid disallowance, which was dismissed. Undeterred, the assessee approached the Income-Tax Appellate Tribunal (hereinafter the 'Tribunal) with the contention that in the facts and circumstances of this case there was no question of spreading over the aforesaid amount of premium as the amount was, in fact, spent and incurred in the assessment year in question. It was further submitted that since no such amount was spent in the previous four years, the assessee did not claim any deduction of the said amount at the rate of 1/5th in the previous years. The contention of the assessee has found favour before the Tribunal and it is for this reason, the Tribunal vide impugned judgment dated March 31, 2005 has allowed the said claim of premium paid in its entirety.

4. We have heard the counsel for both the parties at length. The only reason for which the Revenue wants the claim to be spread over a period of five years is that in *Madras Industrial Investment Corporation Ltd. V. CIT*, 225 ITR 802 (SC), the Supreme Court has accepted the concept of spreading over in the case of issue of debentures and therefore, the approach of the Assessing Officer and the CIT(A) was correct. Mr. Aggarwal, learned senior counsel appearing for the assessee, on the other hand submitted that the said judgment did not apply to the facts of this case as rightly held by the Tribunal. He argued that admittedly

the assessee was following mercantile system of accounts and the entire amount of premium was paid only in the year in question. Therefore, the liability, which was incurred, had become due and paid in the assessment year in question and not in previous years. After considering the respective arguments we are incline to accept the submissions of the learned senior counsel for the respondent. We may start our discussion with the judgment of the Apex Court in the case of *Madras Industrial Investment Corporation Limited* (supra). In that case the assessee company issued debentures at a discount and the total discount on the issue was of ₹1.5 crores amount to ₹3,00,000/- and for the assessment year in which the debenture was issued, i.e., 1968-69, the assessee wrote off ₹12,500/- out of total discount of ₹3,00,000/- being the proportionate amount of discount for the period of six months ending with June 30, 1967 taking into account the period of 12 years, which was the period of redemption and dividing the discount of ₹3,00,000/- over the period of 12 years. The Income Tax Officer disallowed the claim, but the Appellate Assistant Commissioner allowed the deduction at ₹12,500/- and the Tribunal held that the entire expenditure of ₹3,00,000/- was allowable as an expenditure incurred for the purpose of business. On a reference the High Court noted that out of total discount of ₹3,00,000/-, as amount of ₹12,500/- had been allowed which the Department had not challenged. Hence, the High Court was concerned only with the balance amount of ₹2,87,500/- which the High Court held could not be considered as an expenditure. An appeal was filed with the Supreme Court reversing the judgment of the High Court has held as under:-

“Ordinarily, revenue expenditure which was incurred wholly and exclusively for the purpose of business must be allowed in its entirety in the years in which it is incurred. It cannot be spread over a number of years even if the assessee has written off in his books over a

period of years. However, the facts may justify an assessee who has incurred expenditure in a particular year to spread and claim it over a period of ensuing years. In fact, allowing the entire expenditure in one year might give a very distorted picture of the profits of a particular year. Issuing debentures in an instance where, although the assessee has incurred the liability to pay the discount in the year of issue of debentures, the payment is to secure a benefit over a number of years. There is continuing benefit to the business of the company over the entire period. The liability should, therefore, be spread over the period of debentures.”

5. Two things emerged from the aforesaid discussion:-

- (a) That was a case where the debentures were redeemed at a discount. Thus, the assessee was required to pay less amount than the amount at which these debentures were issued. This discounted amount, the assessee, was allowed to be spread over. In the instant case the position is just the opposite. Here, the debentures are redeemed at a premium and the assessee is made to **cuff out** the amount which is more than the face value. The Supreme Court clearly held that ordinarily the Revenue expenditure, which is incurred wholly and exclusively for the purpose of business must be allowed in its entirety in the year in which it is incurred. It is only in exceptional cases, which was one before the Court, the assessee was given an option when the assessee justifies spreading over of the claim over a period of “ensuing years” that was to be allowed. In the present case, as noted above, the assessee did not want this spread over. In fact, in last four years he did not raise any claim. It is only in the year in question when the assessee made claim of the entire amount of premium. In these circumstances, we are of the opinion that the Tribunal rightly distinguished the judgment in the case of *Madras Industrial Investment Corporation Ltd.* (supra) and made the following observations:-

“.....If we apply the spread over theory as laid down by the apex court in the case of Madras Industrial Investment Corporation Ltd. Vs. CIT (supra), all assessments earlier framed were required to be re-opened to allow the respective claim of the assessee in the relevant assessment year. If it is to be done, it results into multiplicity of litigation. We, therefore, are of the view that the ratio laid down by the judgment of the apex court in the case of Madras Industrial Investment Corporation Ltd. Vs. CIT (supra) does not apply to those cases on which NCDs were redeemed at a premium, after a specified period because the liability only incurred when it becomes due or paid. In the case of redemption of NCDs at premium, liability only becomes due when the NCDs are required to be redeemed as per the specified terms and conditions and not prior to that. For this proposition, we find support from the judgment of apex court in the case of E.D. Sasoon & Company Ltd. & Others Vs. CIT (1954) 26 ITR 27 (SC).”

6. The Tribunal also relied upon the judgment of the Calcutta High Court in ***CIT v. Tungabharda Industries Ltd.***, 207 ITR 553 (Cal). In that case the Court has categorically held that the expenditure incurred in respect of debentures was revenue expenditure and the liability to pay premium arose at the expiry of the 7th year from the date of the allotment and there was no liability to pay the premium at all if the debentures were re-purchased under the buy-back clause and there was no further issue of debentures. The payment of premium was clearly a contingent liability and the liability to pay the premium would arise only if the debentures were not re-purchased by the company under clause v(b) and were redeemed only at the end of the 7th year. The entire amount of the premium in respect of the said debentures should be allowed as a deduction in entirety in one year, i.e., in the year in which such liability was incurred.
7. Mr. Sawhney, learned counsel for the Revenue, referred to another decision of the Calcutta High Court in the case of ***National Engineering Industries Ltd. v.***

Commissioner of Income-Tax, 236 ITR 577 wherein the Calcutta High Court has held that in view of the Apex Court's judgment in *Madras Industrial Investment Corporation Ltd.* (supra), judgment in *Tungabharda Industries Ltd.* (supra) is no longer a good law. With respect to Calcutta High Court, we are of the opinion that the two judgments operate in different fields and without appreciating the settled and fine distinction which we have pointed out, Calcutta High Court made those observations. For this reason, we are not inclined to follow the judgment of the Calcutta High Court. The question is decided in favour of the assessee and the appeal is dismissed.

(A.K. SIKRI)
JUDGE

(SURESH KAIT)
JUDGE

October 27, 2010
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