

4

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

**ITA 51 OF 2011
ITA 52 OF 2011
ITA 58 OF 2011**

%

***Judgment Reserved On: 12.09.2011
Judgment Pronounced On: 30.9.2011***

(1) ITA 51 OF 2011

NARAINGARH SUGAR MILLS LTD.

... APPELLANT

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

VERSUS

COMMISSIONER OF INCOME TAX

... RESPONDENT

Through: Ms. Suruchi Aggarwal, Sr. Standing
Counsel.

(2) ITA 52 OF 2011

NARAINGARH SUGAR MILLS LTD.

... APPELLANT

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

VERSUS

COMMISSIONER OF INCOME TAX

... RESPONDENT

Through: Ms. Suruchi Aggarwal, Sr. Standing
Counsel.

(3) **ITA 58 OF 2011**

NARAINGARH SUGAR MILLS LTD.

... APPELLANT

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

VERSUS

COMMISSIONER OF INCOME TAX

... RESPONDENT

Through: Ms. Suruchi Aggarwal, Sr. Standing
Counsel.

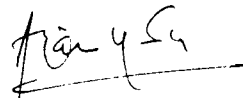
CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

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.

1. For orders, see ITA 57/2011.


(A.K. SIKRI)
JUDGE


(SIDDHARTH MRIDUL)
JUDGE

SEPTEMBER 30, 2011

skb

5

IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 57 OF 2011
ITA 51 OF 2011
ITA 52 OF 2011
ITA 58 OF 2011

Judgment Reserved On: 12.09.2011
Judgment Pronounced On: 30.9.2011

%

(1) ITA 57 OF 2011

NARAINGARH SUGAR MILLS LTD.

... APPELLANT

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

VERSUS

COMMISSIONER OF INCOME TAX

... RESPONDENT

Through: Ms. Suruchi Aggarwal, Sr. Standing
Counsel.

(2) ITA 51 OF 2011

NARAINGARH SUGAR MILLS LTD.

... APPELLANT

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

VERSUS

COMMISSIONER OF INCOME TAX

... RESPONDENT

Through: Ms. Suruchi Aggarwal, Sr. Standing
Counsel.

(3) ITA 52 OF 2011

NARAINGARH SUGAR MILLS LTD.

... APPELLANT

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

VERSUS

COMMISSIONER OF INCOME TAX

... RESPONDENT

Through: Ms. Suruchi Aggarwal, Sr. Standing
Counsel.

(4) ITA 58 OF 2011

NARAINGARH SUGAR MILLS LTD.

... APPELLANT

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

VERSUS

COMMISSIONER OF INCOME TAX

... RESPONDENT

Through: Ms. Suruchi Aggarwal, Sr. Standing
Counsel.

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

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?

1. Though the Assessing Officer while framing the assessment for the assessment year 2003-04, had made three additions we are concerned in these appeals with only one item namely disallowance of claim of deferred revenue expenditure which arises in these four appeals and pertains to assessment year 2003-04 to 2006-07. The question has initially arisen in the assessment year 2003-04 [out of which ITA 57/2011 arises] and in other years it is spill over of that very issue and, therefore, we would like to take note of the facts appearing of ITA 57/2011. We may also clarify that the facts pertaining to the aforesaid issue only are recapitulated by us.

2. The appellant is a public limited company which was incorporated under the Companies Act in the year 1991. The appellant is engaged in producing sugar, molasses and bagasse. For the instant assessment year 2003-04, the appellant company filed its return of income declaring total loss of ₹ 9,58,51,076/-. The return of income was processed on 3rd February, 2004 under Section 143 (1) (a) of the Act at the returned loss. Thereafter, the case was selected for scrutiny and notice under Section 143 (2) of the Act was issued. The Assessing Officer framed an assessment under Section 143 (3) of the Act determining the loss at ₹6,81,51,750/-. The Assessing Officer, inter alia made the following disallowance:-

8

(i). disallowance of claim of deferred revenue expenditure
of ₹ 1,08,43,872/-.

We may point out in this behalf that the assessee had taken loans towards working capital as well as term loans from various banks. On these loans, during the year in question, the assessee paid a total interest of ₹ 6,23,73,947/-. However, entire interest paid was not shown as revenue expenditure in this year. Instead the assessee booked a sum of ₹ 1,06,68,247/- to profit and loss account as revenue expenditure adopting the formula of 26 days : 150 days.. The balance amount of ₹ 5,16,99,700/- was transferred by the assessee to deferred revenue expenditure.

The aforesaid approach of treating the interest paid as deferred revenue expenditure did not gel with the Assessing Officer. He asked the assessee to substantiate accuracy and genuineness of the claim supported by documentary evidence. In reply the assessee had stated that the deferred revenue expenditure included expenses of Director foreign travel and excess of interest on term loan and working capital taken proportionately to the period of operation in current year as compared to the previous year. According to the Assessing Officer, as no documentary evidence was furnished, he disallowed the claim of ₹ 1,08,43,872/- and added the same in the income of the assessee. The assessee preferred appeal against this order raising a grievance that no adequate opportunity was given to the assessee for furnishing the evidence in support of the claim. The assessee gave the details before the CIT (A).

These details of the interest paid to various banks on working capital as well as term loan and details of the expenditure in the manner stated above is reflected in the following chart:-

Details of the Interest for the period 01.-04-02 to 31-03-03

Interest on Working Capital (SBI, SBOP, OBC and Canara Banks)	₹4,15,14,312
Interest on Term Loan: IDBI bank	₹95,60,352
HSIDC	₹30,48,267
ICICI Bank	₹66,67,384
SBI bank	₹15,77,632
Total Interest	₹6,23,67,947
Less: booked as Revenue expenditure to P&L A/c (26/152) She. 'M'	₹ 1,06,68,247
Balance Transferred to Deferred Revenue Expenditure	₹5,16,99,700

3. As per the assessee that interest transferred to deferred revenue expenditure was to be amortized for a period of five years starting from the assessment year 2003-04 itself and, therefore, 1/5th of the aforesaid figure which came to ₹ 1,08,43,872 was debited to profit and loss account in this very year and the calculations submitted in this behalf has submitted by the assessee were as under:-

Details of Deferred Revenue Expenditure for

the A.Y. 2003-04:

Particulars	Gross Amount	Amortised (1/5 th)
a) Opening balance	₹4,42,000	₹3,56,000
b) Interest including Interest on term loan and working capital of current F.Y.	₹5,16,99,700	Rs 1,03,30,940
c) Foreign travel of Directors	₹7,39,660	₹ 1,47,932
Total amount amortized and debited to P & L A/c as deferred revenue expenditure –She. 'L'		₹1,08,43,872.

Balance was taken to the capital account and on that amount the assessee claimed depreciation.

4. The assessee further submitted that the aforesaid amount was treated as deferred revenue expenditure and written off over a period of five years i.e. 1/5th in each year on the basis of decision of the company which have been approved by the Directors as it was an act of business prudence, in order to avail credit facility from the banks. According to the assessee, thus, it was done for the commercial of the business. The course of action taken for amortising the said expenditure over a period of five years sought to be justified on the ground that in the case of sugar industry the work capital funds are used in building of stock, benefit whereof

11.

accrues in future. Judgment of the Supreme Court in the case of *Madras Industrial Investment Corporation Vs. CIT* 225 ITR 802 was relied upon in support of the contention that concept of deferred revenue expenditure has been duly approved by the Apex Court. The contention of the assessee found favour with the CIT (A) who allowed the claim as deferred revenue expenditure thereby deleting the addition of ₹1,08,43,872/-.

5. The department felt aggrieved of the aforesaid order of the CIT (A) and hence preferred the appeal before the ITAT. In the meantime for other assessment years also, the expenditure was allowed @ 1/5th by the CIT (A), the Revenue filed four appeals in respect of all these assessment years. All these appeals were consolidated and have been decided by the learned Tribunal vide common decision dated 8th January 2010. After taking into account the facts, narration whereof has already given above, as well as the submission of the parties, the Tribunal got persuaded by the argument of the Revenue and thus set aside the order of the CIT (A) and restore that of the Assessing Officer, supported by the following discussion:-

“We have heard both the parties and gone through the material placed on record. There is no dispute that the assessee is following mercantile system of accounting. Therefore, the liability incurred on account of interest payable on term loan and working capital as well as other expenditure by way of directors foreign travel expenses are allowable as deduction in the year in which such

liability is incurred. There is no concept of deferred revenue expenditure in Income-tax Act. The assessee had taken a decision to claim 1/5th of such expenditure in the year in which the expenditure is incurred and the balance expenditure has been claimed in four subsequent years equally. The expenditure which had been claimed in subsequent years constitutes the part of previous year's expenditure, which is not allowable as deduction. It is not a case where the expenditure was incurred in relation to certain investments, the effect of which would be spread over in more than one year. Therefore, the assessee cannot be allowed deduction under Section 37 in respect of expenditure, which was incurred in earlier years on the principal of deferred revenue expenditure, as claimed by the assessee. The income of the assessee has to be determined on the basis of the facts of each year. If the contention of the assessee is accepted that expenditure should be allowed on the basis of decision taken by the assessee, it will open flood gates for litigations under which the assessee can defer any expenditure the way they like and claim the same in the year in which it becomes more convenient and beneficial to them. Therefore, we do not approve the contention of the assessee that revenue expenditure which has been incurred in a particular year should be deferred to subsequent years. Therefore, no deduction out of deferred revenue expenditure, which has come from earlier years, can be allowed as deduction in the years under consideration as the same will constitute the prior period expenditure. The decision relied upon by the Ld. CIT (Appeals) in the case of Madras Industrial Investment Corporation (supra) is not applicable to the facts as pointed out by the Ld. Sr. DR. Accordingly, in our considered opinion, the Ld. CIT (Appeals) was not justified in allowing the claim of assessee in respect of deferred revenue expenditure. We, therefore, set aside the order of the Ld. CIT (Appeals) and restore that of the assessing officer. The ground relating to deferred revenue expenditure in all the years is allowed in favour of the Revenue."

6. It is not in dispute that the liability incurred on account of interest payable on term loan as well as working capital and also other expenditure by way of director's foreign travel expenses. It is also not in dispute that the liability on this account accrued in the year 2003-04 and incurred by the assessee in that year. It is also an admitted fact that the assessee is following mercantile system of accounting. The expenditure of this nature, on the face of it is revenue expenditure and there was no reason to spread over the same over a period of five years. In fact on these very term loans and working capital the assessee had paid interest in the succeeding year as well and claimed deduction on entire expenditure as revenue expenditure in those succeeding years. It was not a case of the assessee that there was an enduring benefit and effect thereof was over a period of five years.

7. We agree with the reasoning of the ITAT that the move on the part of the assessee in amortizing the said expenditure, over a period of five years treating them as deferred revenue expenditure was clearly misconceived and fraught with dangers, inasmuch as the assessee could not be given such a levy permitting it to deferred any expenditure the way it likes and claim the same in the year in which it become more convenient and beneficial to it.

14

8. The Tribunal is right in holding that in the instant case the judgment of Supreme court in *Madras Industrial Investment Corporation (supra)* would not be applicable.

9. Insofar as judgment of this Court in *Commissioner of Income Tax Vs. Industrial Finance Corporation of India Ltd.* 185 TAXMAN 296 it is not applicable in the present case. In that case, this Court held that the assessee himself wanted to spread the expenses over a period of ensuing year it should be allowed. However, there was no such proposition laid down in absolute term. It was clearly stated that such a course of action would be admissible only if the principle of matching concept is satisfied which was restricted to the cases of debentures. This Court categorically observed that the general principle stated even in *Madras Industrial Investment Corporation (supra)* was that ordinarily revenue incurred wholly or exclusively for the purpose of business can be allowed in the year in which it is incurred. There may be some exceptional cases justifying spreading the expenditure and claiming it over a certain number of years, that too, when the assessee chose to do so. The discussion was summed up in the following manner:-

“Thus, the first thing which is to be noticed is that though the entire expenditure was incurred in that year, it was the assessee who wanted the spread over. The Court was conscious of the principle that normally revenue expenditure is to be allowed in the same year in which it is incurred, but at the instance of the assessee, who wanted spreading over, the Court agreed

15

to allow the assessee that benefit when it was found that there was a continuing benefit to the business of the company over the entire period.

What follows from the above is that normally the ordinary rule is to be applied, namely, revenue expenditure incurred in a particular year is to be allowed in that year. Thus, if the assessee claims that expenditure in that year, the Income Tax department cannot deny the same. However, in those cases where the assessee himself wants to spread the expenditure over a period of ensuing years, it can be allowed only if the principle of matching concept is satisfied, which upto now has been restricted to the cases of debentures."

10. Even when we apply the aforesaid test in the present case, the assessee would not be entitled to defer the expenditure over a period of five years. For this reason, we dismiss the ITA 51/2011, 52/2011 and 58/2011.

11. In fact, Mr. Aggarwal, at the time of arguing these appeals, after putting a feeble attempt in questioning the wisdom of the Tribunal adopting the aforesaid approach, laid emphasis on altogether different aspect and the effect thereof would be only on ITA 57/2011. His plea was that if the course of action adopted by the revenue authorities is to be accepted, that would mean that it was not open for the assessee to spread over the said expenditure in the form of interest etc. over a period of five years which would mean that the assessee could have claimed the entire expenditure in the year in question i.e. in the assessment years 2003-04. On

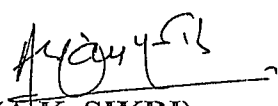
this premise, his submission was that in that eventuality, when there was no dispute that the expenditure was in fact incurred in the said assessment year, the entire expenditure of ₹ 6,23,73,947/- should be allowed to the assessee in the assessment year 2003-04.

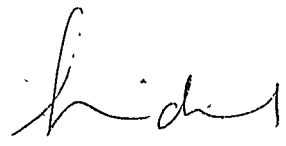
12. Ms. Suruchi Aggarwal, learned counsel appearing for the Revenue, on the other hand, submitted that when no such claim was ever made by the assessee in the year in question, it should not be allowed. She further submitted that for the first time this plea was raised in the instant appeal and even before the Tribunal no such case was set up. She argued that unless the claim is made either in the return or at least in the revised return, the assessee will not be permitted to push that claim.

13. Technically, Ms. Suruchi Aggarwal may be correct in her submissions. At the same time, that would amount to not allowing the appellant/assessee the claim of the expenditure incurred on interest etc. even in the assessment year 2003-04 though the assessee was admittedly entitled to claim the same in that year, we make this observation having regard to the fact that there is no dispute about the genuineness of the said expenditure incurred in the assessment year in question.

14. In these circumstances, we permit the assessee to raise such a claim in the year in question by approaching the Assessing Officer, in accordance with law.

15. These appeals are disposed of in the aforesaid terms.


(A.K. SIKRI)
JUDGE


(SIDDHARTH MRIDUL)
JUDGE

SEPTEMBER 30, 2011
skb