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

% Judgment delivered on: 16.11.2016

+ **ITA 128/2004**

COMMISSIONER OF INCOME TAX DELHI Appellant
Through: Mr. P. Roychaudhry and Ms. Vibhooti
Malhotra, Advs.

versus

M/S NAV SANSAR AGRO PRODUCTS Respondent
Through: Ms. Kavita Jha and Ms. Mehak Gupta,
Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

S. RAVINDRA BHAT, J (Oral)

1. The questions of law framed in this case are as under:

“1. Whether learned ITAT is correct in holding that the assessee is entitled to set off interest finance and professional and other charges of Rs.75,35,047/- paid in the assessment years 1991-92 and 1992-93 respectively from the interest income of the assessee for the assessment year 1993-94?

2. Whether the order of the learned ITAT dated 16.12.2002 dismissing the appeal of the Revenue is perverse and as it is a non speaking and non reasoned order and does not deal with the reasoning and facts mentioned by the Assessing Officer?”

2. The assessee, which deals in real estate, entered into an

agreement for purchase of 24,000 sq. yards of commercial land on 27.08.1990 for consideration of ₹ 4.88 crores, in furtherance whereof it paid ₹ 2.20 crores as earnest money. Substantial amounts were borrowed for this purpose from American Express Bank. For Assessment Year ('AY') 1991-1992 it paid ₹ 25,61,661/-, and ₹ 49,73,775/- for AY 1992-1993, as interest, to the banker. In addition, for the first year i.e. 1991-1992 the assessee claimed certain expenses as legal and other incidental charges. In AY 1991-1992 and as well as in the subsequent year 1992-1993, the assessee's computation of total income contained a note, which reads as under:

".... The company acquired lands in village situated in Distt. Gurgaon and entered into agreement to sell with DLF Universal Ltd. Accordingly, the business has already commenced and the revenue expenses have been claimed in the Profit & Loss A/C and in the return of income, except interest & finance/legal charges which have been excluded on the basis of stand of the department in other group cases that the same is includible in the cost of land (stock-in-trade). It is, however, claimed that the above disallowance has been made out of abundant caution and the same is allowable in this year, being a period cost which does not go to increase the cost of stock-in-trade, and as such the same may please be allowed...."

3. The subsequent year's (1992-1993) computation of income too contained an identical note. The effect of this was that the interest expenditure was offered for self-disallowance as a matter of "abundant caution", though it was allowable as period cost which did not go to increase the cost of stock-in-trade. This was on account of the assessee's adoption of the then prevailing standard applicable to

project completion method for recognizing revenue and other expenditure.

4. For AY 1991-1992 and 1992-1993 the assessment was framed and the recognition i.e. self-disallowance was accepted. In the assessment year in question i.e. 1993-1994 the assessee reported that the transaction had fallen through and was rescinded. It consequently returned the earnest money and also re-paid the bank. It also received back its earnest money together with interest of over ₹ 91 lakhs. As against this, the assessee sought to set off the total interest expenditure as “prior period” expenses. This was disallowed by the AO, held that since the expenditure was not incurred during the relevant assessment year in question the claim of prior period expenditure could not be allowed.

5. The Commissioner of Income Tax (Appeals) [CIT(A)] reversed the AO’s reasoning. The CIT(A) noted that identical transactions of several group companies had been scrutinized in various assessments. It relied upon the decision of the Income Tax Appellate Tribunal (‘ITAT’) in **Vee Dee Investment & Agencies Ltd. vs ACIT** ITA No. 7663/Del/91. The CIT(A) also relied upon his own decision dated 13.12.1994 in appeal nos. 34/94-95 and 42/94-95 in the case of **Kum Kum Cultivation Pvt. Ltd.** The gist of the CIT(A) reasoning was that having regard to the assessee’s method of accounting, which recognized expenditure by increasing the cost of land at the time of conveyance, since the AO accepted the method for past years, disallowance, he ought to have permitted prior period expenditure. The CIT(A)’s reasoning was affirmed by the ITAT.

6. It is urged on behalf of the Revenue that ITAT and the CIT(A) fell into error in holding that prior period expenditure could be permitted in the manner as was done in this case. It is urged that the assessee had not claimed any deduction for the previous year i.e. AY 1991-1992 and 1992-1993 in respect of interest and other charges and no such expenditure of the kind sought actually arose even in the current assessment year. As a consequence, the amount could not be treated as prior period expenditure. It was also urged that the interest liability of the assessee towards the bank was a determined and crystallized one and, therefore, could not be said to be a permissible prior period expenditure.

7. This Court has considered the submissions. The note appended to the computation of income file along with the return by the assessee in this case clearly stated that interest and legal charges were excluded on the basis of the Income Tax Department's stand in other group cases that they could be included in the case of land and were done by way of "abundant caution" as a disallowance.

8. Having regard to this circumstance and further the fact that other group company cases i.e. ***Kum Kum Cultivation*** involved a similar and identical exercise where ultimately the disallowance was set aside by the ITAT, the adoption of the same course of action in this case cannot be said to have been erroneous. Furthermore, in the eventuality of the transaction itself maturing the likelihood of the assessee being permitted to capitalize or include the interest component as part of the cost of land has not been disputed. If such is correct course of action, the reverse situation whereby the transaction

does not mature, should also attract a similar treatment that the interest paid but not shown as deductible expenditure for the previous period should be permitted as prior period expenditure.

9. The questions of law are therefore answered against the Revenue and in favour of the assessee. The appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

NOVEMBER 16, 2016/kk