FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

INCOME TAX REFERENCE (itr) No. 96 (B) OF 1994

The Commissioner of Income Tax

v.

M/s Central Province Manganese Ore Co. Ltd. Ngp.

Office Notes, Office Memoranda of Coram appearances, Court's orders or directions and Registrar's orders.	Courts's or Judge's orders

---

Coram : B.P .Dharmadhikari and V.M.Deshpande, JJ.

Date : 10th DECEMBER, 2015

By this application under Section 256(1) of the Income Tax Act, 1961, following question has been referred to this Court :

> "Whether on the facts and in the circumstances of the case, the ITAT was justified in deleting interest chargeable on amounts advanced to M/s Ritz Ltd. and S.P. Builders?"

Facts are not in dispute. Perusal of order of ITAT dated 20.1.1993 reveals that in the immediate preceding Assessment Year, i.e. 1993-94, addition of interest by the Assessing Officer was deleted by the CIT (Appeals). Insofar as the interest which otherwise would have been received by the assessee from M/s S.P. Builders, the CIT (Appeals) has followed its earlier view and deleted that addition.

The assessee could not recover even the principal amount from M/s S.P. Builders and, therefore, urged before CIT (Appeals) that there was no question of recovery of interest. In addition, it was also contended that as such amount of interest written off in the account, interest could not have been deemed as accrued. This contention has been accepted by CIT (Appeals).

The addition of interest amount insofar as recovery of its claim by the assessee against M/s S.P. Builders is concerned, was ordered by the Assessing Officer only on account of mercantile system of accounting being followed. Facts show that in a suit instituted for recovery of its dues by the assessee against M/s Ritz Ltd., the issue was compromised and accordingly the assessee could not and did not recover the interest which would have been normally earned by it. These facts find consideration in paragraph 3 of the above mentioned order of ITAT. The facts, therefore, establish that on account of legal and valid compromise, the assessee received less interest and has accordingly disclosed it. The interest to which it was not entitled under decree of Court, therefore, could not have been added back.

Same analogy was also applied insofar as proceedings against S.P. Builders are concerned. The assessee could not charge any interest from S.P. Builders and, therefore, for the assessment year 1983-84 it was written-off as irrecoverable. The validity or correctness of this action again is not in dispute.

Our attention has been invited to the order dated 20.4.2007 passed in Income Tax Application No. 56 of 1995 where the Department had approached against the very same assessee urging that deduction of

Rs.14,49,347/- under Section 57(iii) of Income Tax Act was not an expenditure. While examining this controversy for the very same assessment year, this Court found that the assessee has sought deduction of difference between the principal amount payable by Ritz Ltd. as per its book and the amount actually received under the Head “Income from Other Sources”. This entitlement of deduction has been maintained.

Facts show that interest income expected was rendered irrecoverable and accordingly the CIT (Appeals) has deleted the additions by the Assessing Officer. The treatment extended in the earlier assessment year was also followed for the said purpose. We, therefore, answer the question in the affirmative, i.e. in favour of assessee and against the revenue. Income Tax Reference disposed of accordingly.

JUDGE **JUDGE**

/TA/