

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No.140 of 2009
Date of decision: 13.1.2016**

Cebon India Limited

.....Appellant

Commissioner of Income Tax, Aayakar Bhawan, Faridabad

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. S.K.Mukhi, Advocate for the assessee.

Mr. Tejinder K.Joshi, Advocate for the revenue.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the appellant-assessee under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 6.6.2008, Annexure A.1 passed by the Income tax Appellate Tribunal, Bench I, New Delhi (in short, "the Tribunal"), for the assessment year 1995-96, claiming following substantial questions of law:-

"i) Whether, the Tribunal was justified in confirming the addition on account of claim of interest and sales tax recoverable from IFCI having rightly charged to profit and loss account for the year under appeal in which issue became final by wrongly resorting to the provisions of Section 43B of the Income Tax Act, 1961?

ii) Whether the Tribunal was justified in confirming 25%

disallowance out of business expenditure incurred jointly on the employees and outsiders by treating the same as entertainment expenditure which is against the established principles of law that in those cases where there are mixed expenditure on account of exempted expenditure and other no proportionate disallowance is tenable?

iii) Whether the order of the Tribunal is perverse and against the provisions of law?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee filed its return for the assessment year 1995-96 declaring nil Income on 30.11.1995. Prima facie adjustment/disallowance under section 143(1)(a) of the Act was made by the Assessing Officer in the intimation issued under section 143(1)(a) of the Act on account of interest payable to IFCI amounting to ₹ 22,04,344/- and sales tax of ₹ 13,88,743/- against which the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 17.9.1997, the CIT(A) dismissed the appeal. The assessee filed appeal before the Tribunal which was allowed vide order dated 22.5.1998 and prima facie adjustments were deleted on the ground that the issue being debatable could not be disallowed under Section 143(1)(a) of the Act. During the pendency of the appeal before the Tribunal, the Assessing Officer passed order under Section 144 of the Act dated 16.3.1998, Annexure A.2 vide which inter alia prima facie adjustments which were disallowed under Section 143(1)(a) of the Act, were maintained while framing the regular assessment besides disallowance of entertainment expenses of ₹ 52,257/- as according to the Assessing Officer, the claim of the assessee was not admissible. Against the said order, the assessee filed

appeal before the CIT(A) which was dismissed ex parte vide order dated 11.11.1999, Annexure A.3. The assessee filed appeal before the Tribunal. Vide order dated 26.5.2003, Annexure A.4, the Tribunal set aside the exparte order dated 11.11.1999, Annexure A.3 and sent the file to the CIT (A) to decide afresh after affording reasonable opportunity to the assessee. Accordingly, the CIT(A) heard the matter on merits and confirmed the disallowance of ₹ 22,04,344/- and ₹ 13,88,741/- made by the Assessing Officer on account of interest to IFCI and sales tax by invoking the provisions of section 43B of the Act besides maintaining the addition of ₹ 52,257/- on account of entertainment expenditure. The assessee filed appeal before the Tribunal. Vide order dated 22.5.1998, Annexure A.6, the Tribunal upheld the impugned disallowances. Hence the instant appeal by the assessee.

3. We have heard learned counsel for the parties.

4. The appeal raises the issues relating to following disallowances:-

(a) ₹ 22,04,344/- on account of liability of interest to IFCI;

(b) claim of ₹ 13,88,741/- as sales tax liability;

(c) ₹ 52,257/- under the head 'entertainment expenditure'.

5. Taking up the first issue, a perusal of the order passed by the Tribunal shows that the disallowance of ₹ 22,04,344/- on account of liability of interest to IFCI was maintained with the observation that the liability had not crystalized in this year and therefore, this expense was not the expense of the year under appeal. The relevant findings read thus:-

“3. We have considered the facts of the case and rival submissions. We find that in so far as interest liability is

concerned, the assessee had paid certain amounts in financial years 1989-90, 1990-91 and 1991-92. However, in each of these years, 20% of the amount paid was not charged to profit and loss account but was transferred to interest recoverable account. The aggregate of such amounts was charged to profit and loss account in this year as the amount was written off in the interest recoverable account. In the light of these facts, it is clear that the initial submission taken before the learned CIT (A) that nothing was claimed in this year was not correct (reference page 63 of the paper book – being submissions before the learned CIT(A)). The changed stand now is that the liability got crystalized in this year and therefore, it was deductible in computing the income of this year as the amount was written off to the profit and loss account. It appears that the assessee was entitled to the rebate of 20% on interest subject to fulfilment of certain conditions regarding export of goods. The assessee did not fulfil the conditions of the agreement in this regard, as clear from the letter of IFCI. Although the interest pertained to financial years 1989-90, 1990-91 and 1991-92, the first letter was written for refund of the amount to the IFCI on 22.9.1992 i.e. after close of financial year 1991-92. Thus, till the close of this financial year, the assessee had no reason to believe that it was entitled to the rebate from interest. This may be because in the relevant financial years, the assessee was aware of the fact that it was not entitled to the rebate. It is another matter that 20% of the amounts was not charged to profit and loss account for reasons best known to the assessee. The claim was made belatedly on 22.9.1992 which was rejected by the IFCI as the terms and conditions of the waiver were not fulfilled. Thus, no reasonable basis has been shown by the assessee by way of evidence that it was entitled to 20% rebate from interest and prerequisite conditions for grant of such rebate were fulfilled. The assessee was entitled to pay interest as per agreed terms and conditions and it was also paid in the

respective years. This shows that the liability for these amounts accrued in the respective years and thus the liability pertained to those years. The liability does not become the liability of this year either in terms of the refusal of the IFCI on 22.2.1995 or in view of the Board resolution passed on 15.3.1995 stating inter alia that the amount is charged to profit and loss account as it has become irrecoverable in view of the IFCI letter. Thus, the position which obtains is that the liability in respect of interest has been incurred in the respective years though paid but not charged to profit and loss account of those years. The liability in respect of those years was charged to profit and loss account of this year although no amount was paid by way of interest to the IFCI in this year in so far as the amount of ₹ 22,04,344/- is concerned. In other words, there is no foundation to hold that the liability was inchoate in those years which crystalized in this year, the reason being that the assessee was required to pay interest at the agreed rate and no rebate was admissible in view of non fulfilment of export obligation which was also clear in those years. Therefore, we do not find ourselves in agreement with the learned counsel that the liability was otherwise allowable under this Act in this year. The liability was also not paid in this year. Therefore, the learned CIT(A) was right in holding that the assessee is not entitled to deduct this amount in computation of its income.”

6. Adverting to the issue of claim of sales tax liability, the finding recorded by the CIT(A) was upheld by holding that the assessee had failed to justify how the amounts claimed were transferred to the recoverable account when these were not the liability of the assessment year in question and they were not paid or were payable in this year. The following relevant observations were recorded:-

“3.1 Coming to the issue of sales tax, no evidence has been

brought in record, as in the case of interest, to show that the assessee was entitled to any rebate, consequent to which payment of sales tax in those years was partly transferred to sales tax recoverable account. The assessee has filed a copy of this account on page 89 of the paper book which shows that various amounts were carried over to this account between 31.3.1991 to 31.3.1992. The narration is either the amount paid or the amount deposited. No order or letter has been filed from the sales tax authorities that any demand was raised by them in this year or that any claim of refund in respect of earlier payments was denied in this year. There is only the Board resolution to the effect that a sum of ₹ 13,88,741/- paid in financial year 1991-92 towards sales tax demand is charged as expenditure to profit and loss account of this year since it has been decided on the basis of legal opinion obtained by the Board and on the basis of outcome of the pending sales tax appeals which now stand disposed off against the company and consequent upon crystallization of sales tax liability during this year. There is no evidence to support any litigation or disposal of any appeal, leading to crystallization of any liability in this year. Again as in the case of interest, certain amounts paid were transferred to recoverable account for the reasons best known to the assessee. The liability did not arise in this year nor it was paid in this year. Therefore, in this case also, it is not shown that this amount was otherwise payable in this year.

3.2 It may not be out of place to mention here that the assessee is a company which is bound to follow mercantile system of accounting. The assessee has followed mercantile system and there is no dispute in this matter. If the liabilities of earlier three years in respect of interest or earlier year in respect of sales tax is allowed merely on the basis of Board resolution, it will lead to distortion of the picture of profits of this year. Therefore, we are of the view that the learned CIT (A) was right in holding that the amounts were not deductible

as neither the liability accrued in this year nor it was paid in this year. Thus, this ground is dismissed.”

7. As regards disallowance of ₹ 52,257/- on account of staff, welfare expenses and annual general meeting expenses, it was held that since the expenditure on tea, lunch etc. had the element of entertainment, the Assessing Officer was right in treating 25% of the expenditure as entertainment expenditure. The relevant conclusion of the Tribunal reads thus:-

“5. Ground No.5 is against disallowance of a sum of ₹ 52,257/- on account of staff and welfare expenses and annual general meeting expenses. The Assessing Officer had considered the sum of ₹ 91,713/- by treating 25% of the expenditure as entertainment expenditure. Further, he treated a sum of ₹ 22,800/- being hotel expenses and AGM expenses as entertainment expenses. Thus, the total entertainment expenditure was computed at ₹ 1,14,513/-. The disallowance under section 37(2) was worked out at ₹ 52,257/-. The claim of the assessee was that the expenditure was business expenditure. The learned CIT(A) held that the expenditure on tea, lunch has the element of entertainment and therefore, the Assessing Officer was right in treating 25% of the expenditure as entertainment expenditure, leading to disallowance of ₹ 52,257/-.

5.1 Before us, learned counsel for the assessee pointed out that the details of the expenditure were filed before the learned CIT(A) which have been placed in the paper book on pages 25 to 29. The expenditure was in the nature of business expenditure and therefore, the same should have been allowed in full. In reply, learned DR relied on the order of learned CIT(A).

5.2 We have considered the facts of the case and rival

submissions. We find that the expenditure was incurred on staff members for providing tea etc. Further expenditure was also incurred on lunch and dinner for staff as well as for others. The assessee has not culled out the expenditure incurred on outsiders which will be in the nature of entertainment expenditure while the expenditure on the staff members during office hours or for late sitting in the office will not be in the nature of entertainment expenditure. However, in the absence of proper working furnished by the assessee, the estimate of entertainment expenditure at 25% of the total expenditure is reasonable. Therefore, this ground is also dismissed.”

8. Learned counsel for the appellant-assessee has not been able to show that the findings recorded by the Tribunal are illegal or erroneous.

9. Examining the judgments relied upon by the learned counsel for the appellant-assessee, it may be noticed that in *CIT vs. Patel Brothers & Co. Limited*, (1995) 215 ITR 165, the relevant assessment years were 1969-70, 1970-71 and 1971-72. The question for consideration before the Apex Court was with regard to deduction of expenditure incurred in providing ordinary meals and refreshments to the outstation customers according to the customary hospitality and trade usage satisfying the general test of commercial expediency relating to those assessment years. It was held that the expenditure incurred by the assessee in providing ordinary meals to the outstation customers according to the established business practice was a permissible deduction in spite of sub section (2A) of Section 37 of the Act to which the assessee was entitled in the computation of their total income for the purpose of payment of tax under the Act during the relevant period prior to 1.4.1976. It was noted that the matter in question related to the

period prior to 1.4.1976 and, therefore, the decision was based on sub section (2A) of Section 37 of the Act minus Explanation 2 inserted later by Finance Act, 1983 retrospectively w.e.f 1.4.1976. In *New Diwan Oil Mills vs. CIT*, (2009) 20 DTR Judgments 124, the assessee claimed set off of loss in the assessment year 1983-84. The revenue disallowed the claim on the ground that loss incurred on 28.3.1978 could be claimed as set off in the assessment year 1978-79 only which was not held to be justified as since assessee's civil suit was dismissed on 31.5.1982 during the financial year 1982-83, loss incurred to the assessee in that financial year only was allowed to be set off in the assessment year 1983-84. In *Oriental Fire and General Insurance Co. Limited vs. CIT*, (2005) 278 ITR 312 (Delhi), it was held that the reserve for bad and doubtful debts could not be added to the balance of profit disclosed in the annual accounts of the assessee for the assessment year in question. The decisions being based on individual fact situation involved therein and on the basis of the provisions applicable at the relevant time under consideration in those cases, they do not come to the rescue of the appellant-assessee. Thus, substantial questions of law are answered against the assessee. The appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

January 13, 2016
'gs'

(Raj Rahul Garg)
Judge