

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH**

**ITA No. 629 of 2008 (O&M)
Date of decision: 5.5.2017**

Commissioner of Income Tax, Faridabad

.....Appellant

Vs.

**M/s Faridabad Forging Private Limited, Plot No.54, Sector-6,
Faridabad**

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. Tejinder K. Joshi, Senior Standing counsel for the
appellant- revenue.

Ajay Kumar Mittal,J.

1. The appellant-revenue has filed the instant appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 07.09.2007, Annexure A.III, passed by the Income Tax Appellate Tribunal, Delhi Bench, 'H', New Delhi (in short, "the Tribunal") in I.T.A. No.2217/DEL/2000 for the assessment year 1995-96, claiming following substantial questions of law:-

“(a)Whether on the facts and circumstances of the case, the Hon’ble ITAT has erred in holding that Pushar Type Furnaces were installed during the assessment year itself though premises i.e. Plot No. 55 in which the furnaces were

installed was taken on rent in the next financial year and this fact was neither denied by the assessee before the ITAT, nor the ITAT appreciated this aspect of the matter. Further from the facts during survey, it was found that these furnaces had not been installed during the financial year 1994-95 i.e. assessment year 1995-96?”

(b) Whether on the facts and law, the Hon’ble ITAT was right in holding that deduction in respect of interest to financial institutions was allowable under Section 43B of the Income Tax Act, though the payments of ₹ 52,27,975/- made by assessee from 04.04.1995 to 16.11.1995 pertained to outstanding interest for assessment year 1994-95 and not assessment year 1995-96?

(c) Whether on the facts and law, the Hon’ble ITAT was right in holding that deduction in respect of interest to financial institutions was allowable, though the auditor of assessee clearly mentioned in the statutory Audit Report that the interest payable to financial institutions was disallowable under Section 43B of the Income Tax Act and out of total interest liability, an amount of ₹ 27,48,326/- was added back by the assessee itself in the revised return and balance amount of ₹ 37,40,754/- was disallowed by the CIT, Rohtak vide order under Section 263 of the Income Tax Act?

(d) Whether on the facts and in law, the Hon’ble ITAT was right in law in holding that order of Assessing Officer was not erroneous and prejudicial to the interest of revenue?”

2. A few facts relevant for the decision of the controversy involved, as narrated in the appeal, may be noticed. The respondent-assessee filed its return on 30.11.1995 declaring loss of ₹ (-)1,25,570/-. The assessment under Section 143(3) of the Act was completed at ₹ 53,060/- on 27.03.1998. Later on, the income of the assessee company

was enhanced to ₹ 94,70,731/- under Section 263 by the Commissioner of Income Tax, (CIT), Rohtak vide his order dated 22.03.2000. The assessee filed an appeal before the Tribunal against the order passed by the CIT under Section 263 of the Act. The Tribunal set aside the order passed by the CIT and restored the order of the Assessing Officer holding that there is no error in the order of the Assessing Officer in granting deduction under Section 43B of the Act and depreciation. On the issue of depreciation on Pushar Type Furnaces, the Tribunal by accepting the certificate issued by M/s S.L. Graham and Company Limited held that no other expenditure had been incurred after the close of the current financial year i.e. in the next year. On the issue of disallowance of interest which remained unpaid under Section 43B of the Act, the Tribunal accepted the plea of the assessee that the payments were made before filing the return of income. Case of the revenue is that the assessee made the payment of interest before filing the return for the assessment year 1995-96 which pertained to the assessment year 1994-95 and was outstanding but the entire interest accrued in assessment year 1995-96 remained unpaid and was, therefore, rightly disallowed by the CIT while passing order under Section 263 of the Act. Even the auditor of the assessee clearly mentioned in the statutory Audit Report that the interest payable to financial institutions was disallowable under Section 43B of the Act and out of total interest liability, an amount of ₹ 27,48,326/- was added back by the assessee itself in the revised return and balance amount of ₹ 37,40,754/- was disallowed by the CIT. Hence, the instant appeal by the appellant-revenue.

3. We have heard learned counsel for the appellant-revenue.

4. With regard to questions (b) and (c) relating to allowability of deduction in respect of interest to financial institutions under Section 43B of the Act, it may be noticed that an affidavit dated 30.03.2017 has been filed by Smt. Anuradha Mukherjee, Commissioner of Income Tax, Faridabad to the effect that as per Section 43B of the Act, the interest liability incurred during the assessment year 1994-95 by the assessee was paid by it during the assessment year 1995-96 and claimed as deduction in computation of income for the assessment year 1995-96. Since payment of interest had been made during the assessment year 1995-96 for the interest liability incurred during the assessment year 1994-95, the allowance could be given for the assessment year 1995-96. It has further been stated that the above relief is subject to the fact that no deduction had been claimed for the assessment year 1994-95 for the amount of interest. The relevant part of the affidavit dated 30.03.2007 reads thus:-

“In the instant case (pending before Hon’ble High Court) interest liability incurred during assessment year 1994-95 by the assessee (and remaining unpaid at the end of the period i.e. assessment year 1994-95) was paid by the assessee during assessment year 1995-96 and claimed as deduction, in computation of income for the assessment year 1995-96, is valid claim, as per the reading of section 43B of the Income Tax Act, 1961. Since, payment of interest has been made during assessment year 1995-96, for the interest liability incurred during assessment year 1994-95, the allowance can be given for assessment year 1995-96. This is subject to the fact that no deduction has been claimed for assessment year 1994-95 (and also allowed) for the amount of interest (remaining unpaid at the end of assessment year 1994-95).”

5. In view of the above the questions (b) and (c) are answered against the revenue.

6. Question No. (d) is general in nature and, therefore, does not arise for consideration.

7. With regard to question (a) that Pushar Type Furnaces were installed during the assessment year itself though premises i.e. Plot No. 55 in which furnaces were installed was taken on rent in the next financial year, it may be noticed that the CIT had only recorded that on enquiry, it was revealed that Plot no.55 was not hired by the assessee till the end of the assessment year 1995-96 and was taken on rent much later. It was further observed by him that all the three Pushar Type Furnaces were installed and commissioned after the end of the assessment year 1995-96. These findings have been negated by the Tribunal not based on any cogent and reliable material. A categorical finding has been recorded by the Tribunal that majority of the work was completed even prior to the commencement of the financial year and since as per the certificate of the Engineer installing the furnaces that the same were commissioned in the last week of August 1994 to March 1995, the assessee had rightly claimed depreciation thereon. It was thus concluded that whole of the expenses covered erection and installations were complete before the end of the financial year and hence entitled to depreciation. Thus, no error was found in the order passed by the Assessing Officer granting depreciation. The relevant findings recorded by the Tribunal on this issue read thus:-

“Even during the course of revision proceedings the assessee filed photo copy of the certificate from M/s S.L. Graham & Co. certifying that furnace was installed and commissioned in third week of August 1994 and was taken for regular production from last week of August 1994. It was also certified that furnace No.2 and 3 were commissioned in February 1995 and were taken for production from March

1995. This certificate has been discarded by the Commissioner by observing that the certificate is dated 2nd February 1998 i.e. much after the event. If the Commissioner was not satisfied with the contents of the certificate, the recourse would be to call the person certifying the same and putting question to him. However, in absence of any material to hold that the certificate is not genuine, the value as contained in the said certificate is not lost. The work in relation to furnace commenced even prior to the commencement of the relevant financial year. Out of the total cost of ₹ 87.94 lakhs the amount of ₹ 64.99 lakhs was spent prior to 31.03.1994 which was declared as capital work in progress and only during the year under appeal the same was transferred from capital work in progress to the furnace account. The other major amount is a sum of ₹ 13.86 lakhs being the interest on term loan availed for installation of the furnace and now transferred to as the cost of the furnace. Thus it is clear that the majority of the work was completed even prior to the commencement of financial year and since as per the certificate of the Engineer installing the furnace has certified that the same was commissioned in the last week of August 1994 and March 1995, the assessee had rightly claimed depreciation thereon. One of the statement for drawing inference is that depreciation is charged only for one month. The depreciation is debited in the books of accounts as per the provisions of Companies Law. Thus it cannot be a conclusive evidence to hold that furnace was not installed as certified by M/s S.L. Graham and Company Limited. It is to be noted that the total cost was worked out at ₹ 87,94,346/- . After the claim of depreciation of ₹ 56,76,917/- for the year under appeal, the balance sum of ₹ 31,17,430/- was claimed as depreciation in the immediately succeeding assessment year. No other expenditure has incurred after the close of financial year and in the next year. Thus this shows that whatever was required to be done regarding installation of the furnace was completed prior to

the end of the financial year. The depreciation as such has been allowed in the succeeding year by the Assessing Officer by passing order under Section 143(3) of the Act. Even this order has not been found to be erroneous. This shows that the whole of the expenses covered erection and installation were complete before the end of the current financial year and hence entitled to depreciation. Thus there was no error in the order of the Assessing Officer granting depreciation.”

8. In view of the above, the substantial questions of law are answered against the revenue. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

May 05, 2017
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned

Yes

Whether reportable

Yes