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

+ ITA 394/2022

PCIT, DELHI-7

..... Appellant

Through: Mr.Sunil Kumar Agarwal,  
Sr.Standing Couns el for the Revenue  
with Mr.Tushar Gupta and  
Mr.Utkarsh Tiwari, Advocates.

versus

RATNAGIRI GAS AND POWER PVT. LTD. .... Respondent

Through: Mr.Ved Jain with Mr.Nischay  
Kantoor, Advocates.

Date of Decision: 13<sup>th</sup> October, 2022**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****J U D G M E N T****MANMOHAN, J:****C.M.No.44240/2022**

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

**ITA No.394/2022**

1. Present Income Tax Appeal has been filed challenging the order dated 25<sup>th</sup> January, 2021 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA 2952/Del./2019 for the Assessment Year 2013-14.



2. Learned counsel for the Appellant states that the ITAT has erred in confirming the findings of CIT (A) on the disallowance under Section 36(1)(iii) of the Income Tax Act, 1961 ('the Act') ignoring the fact that the CIT (A) had wrongfully assumed that the facts of the present case were similar to that of previous Assessment Year 2012-13. He emphasises that the ITAT has erred in assuming that Revenue had accepted the order of CIT(A) for the previous Assessment Year 2012-13 ignoring the fact that the same was after fresh examination by the Assessing Officer during remand proceedings, which was not the case in the present year under consideration.
3. A perusal of the paper book reveals that the CIT(A) in the present case has observed as under:-

*“5.2 It is noted that similar issue was adjudicated by my predecessor for A.Y. 2012-13 in vide order dated 30.11.2016 in Appeal No: 118/CIT(A)-7/Del/15-16 which was allowed. Operative part of the order is reproduced as under:*

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*“2.5 Thus it can be seen that the said ratio of capitalization of interest cost by the assessee company is merely on the basis of the assumption of the assessee based on the cost of 2500 crores of LNG terminal adopted in the year 20. The assumption does not have any base or proper support or scientific reasoning. The CWIP as on date is 3845.22 crores on account of Plant & Machinery and construction stores only. In fact the other infrastructure like building, roads etc are also to be apportioned to the CWIP which the assessee company has not made. Thus there is no justification for capitalization of finance cost/interest in the ratio of 1:3 as explained by the assessee. Thus it is clear that the ratio adopted by the assessee company is without and proper base, supporting documentary evidence and justification and therefore has been used as a tool to divert more cost in profit and loss a/c. therefore, the apportionment done by the assessee is not acceptable and in the absence of any rational basis, the same*



*is required to be done on a more scientific and reasonable method.*

*2.6 On the perusal of the balance sheet of the assessee company, it is noticed that the entire outstanding liability of the assessee company bearing interest is Rs.8,998.99 crores (8676.52 crores, Non-current liabilities + 322.47 crores, current liabilities). The interest cost is thus required to be reallocated in the ratio of CWIP of 3845.22 crores and total interest bearing liabilities of Assessee Company i.e. 8998.99 crores. Accordingly, the interest to the extent of Rs. 351.25 crores is required to be capitalized. Keeping in view that the assessee has already capitalized on interest of Rs. 179.43 crores, the balance interest of 145.82 crores is further required to be disallowed u/s 36(1)(iii) of the Act, and to be capitalized towards the cost of CWIP and added to the income of the assessee company for the computation of taxable income of the assessment year under consideration.*

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*5.3 Since the facts are similar in the present appeal, no interference is called for with my predecessor. Therefore, addition of Rs.2,15,05,00,000/- u/s 36(1)(iii) on account of Interest attributed to work in progress made by the AO is deleted. This ground of appeal is ruled in favour of the appellant."*

4. This Court also finds that the Revenue has not provided any specific fact either in the grounds or before the appellate authorities below, which suggest that the facts of Assessment Years 2012-13 and 2013-14 are different.
5. Furthermore, both the appellate authorities below have recorded the concurrent findings of fact that the facts in present case are similar to the facts involved in the Assessment Year 2012-13. Consequently, this Court is of the view that the present matter is covered by the decision of the ITAT in the previous Assessment Year, which has not been appealed till date and has accordingly attained finality.



6. The Supreme Court in the case of ***Ram Kumar Aggarwal & Anr. vs. Thawar Das (through LRs)***, (1999) 7 SCC 303 has reiterated that under Section 100 of the Code of Civil Procedure, the jurisdiction of the High Court to interfere with the orders passed by the Courts below is confined to hearing on substantial question of law and interference with finding of the fact is not warranted if it involves re-appreciation of evidence. Further, the Supreme Court in ***State of Haryana & Ors. vs. Khalsa Motor Limited & Ors.***, (1990) 4 SCC 659 has held that the High Court was not justified in law in reversing, in second appeal, the concurrent finding of the fact recorded by both the Courts below. The Supreme Court in ***Hero Vinoth (Minor) vs. Seshammal***, (2006) 5 SCC 545 has also held that “*in a case where from a given set of circumstances two inferences of fact are possible, the one drawn by the lower appellate court will not be interfered by the High Court in second appeal. Adopting any other approach is not permissible.*” It has also held that there is a difference between a ‘question of law’ and a ‘substantial question of law’.
7. Consequently, no substantial question of law arises for consideration in the present appeal and accordingly, the same is dismissed.

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MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

OCTOBER 13, 2022  
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