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

+ **ITA 87/2022**

PR. COMMISSIONER OF INCOME TAX -7 Appellant

Through: Mr.Puneet Rai, senior standing
counsel.

versus

POWER LINKS TRANSMISSION LTD Respondent

Through: None

+ **ITA 90/2022**

PR. COMMISSIONER OF INCOME TAX -7 Appellant

Through: Mr.Puneet Rai, senior standing
counsel.

versus

POWER LINKS TRANSMISSION LTD. Respondent

Through: None

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Date of Decision: 18th April, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present appeals have been filed challenging the orders dated 02nd March, 2021 passed in ITA 5965/DEL/2017 and ITA 5966/DEL/2017 for the Assessment Years 2013-14 and 2014-15 respectively.



2. Learned counsel for the Appellant-Revenue states that the ITAT has erred in deleting the addition of Rs.5,64,73,054/- made by the Assessing Officer under Section 36(1)(iii) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') on account of disallowance of interest expenditure. He states that the ITAT has failed to appreciate that the assessing company had used the borrowed funds for non-business purposes. He states that the Company earned interest income at an average rate of 7.6% while on loans the assessee company paid interest at an average rate of 12.1%. He contends that liability on account of interest could have been reduced by 4.5%, in case the amount kept as FDRs had been utilised in making early repayment of the loans. He emphasises that the assessee company is neither into the business of investment nor in securities. Therefore, according to him, the Assessing Officer had correctly invoked Section 36(1)(iii) of the Act and disallowed the proportionate interest expenditure which was not utilized for business purposes.

3. Learned counsel for the Appellant further states that the ITAT has dismissed the appeals on basis of the Assessee's own case for the Assessment Years 2007-08, 2010-11 & 2012-13. He submits that it is a settled principle that in matters pertaining to tax there is no issue of *res judicata* because each year's assessment is final only for that particular financial/assessment year and does not govern later years.

4. A perusal of the paper book reveals that the issue in dispute in both the present appeals is covered by the decisions passed by co-ordinate Benches of the ITAT in ITA No.1809/Del/2016 for the Assessment Year 2012-13 dated 8th February, 2019 and in ITA No.3869 & 3870/Del/2014 dated 21st December, 2018 for the Assessment Years 2007-08 and 2010-11



respectively. In fact, the Tribunal while dealing with previous assessment years in the assessee's own case has held that due to contractual restrictions and liquidation damages/pre-payment charges, it was neither prudent for the assessee to divert any part of borrowed funds for non-business purposes nor was it prudent to make pre-payment of loan even if the assessee had its own interest free funds.

5. It is an admitted position that the facts and circumstances in the present appeals (for the Assessment Years 2013-14 and 2014-15) are similar to the facts and circumstances for the Assessment Years 2007-08, 2010-11 and 2012-13 to which the aforesaid orders dated 21st December, 2018 and 08th February, 2019 pertain. It is pertinent to mention that no appeal has been filed under Section 260A of the Act till date challenging the orders dated 21st December, 2018 and 08th February, 2019.

6. Undoubtedly, the principles of *res-judicata* and *estoppel* are not applicable in taxation matters. However, it has been held that a departure from a finding during the past years would result in a contradictory finding. (*See: Commissioner of Income Tax vs. Sridev Enterprises (1991) 192 ITR 165*). In fact, in *Commissioner of Income Tax vs Excel Industries Ltd (2014) 13 SCC 457*, the Court had observed that it was not appropriate to allow reconsideration of an issue for a subsequent assessment year if the same "fundamental aspect" permeates in different assessment years.

7. The Supreme Court in *Principal Commissioner of Income Tax, New Delhi vs. Maruti Suzuki India Ltd. [2019] 107 taxmann.com 375 (SC)* has emphasized the importance of promoting the 'principle of consistency and certainty' in tax matters. The Apex Court has held "*There is a value which the court must abide by in promoting the interest of certainty in tax*



litigation. The view which has been taken by this Court in relation to the respondent for AY 2011-12 must, in our view be adopted in respect of the present appeal which relates to AY 2012-13. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable.”

8. Consequently, this Court is of the view that all similar matters should receive similar treatment except where factual differences require a different treatment so that there is assurance of consistency, uniformity, predictability and certainty of judicial approach. Applying the said principles, this Court is of the opinion that no question of law arises for consideration in the present appeals and the same are dismissed.

MANMOHAN, J

DINESH KUMAR SHARMA, J

APRIL 18, 2022
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