

ORDER

A.F.R.
OD-10

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITA/187/2004
KANORIA CHEMICALS INDUSTRIES
LTD.
VS
C.I.T. - IV KOLKATA

BEFORE :

THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
HON'BLE JUSTICE RAJARSHI BHARADWAJ

Date: 18th January 2024.

Appearance :
Mr. J.P. Khaitan, Sr. Adv.
Mr. Sanjay Bhowmick, Adv.
Ms. Swapna Das, Adv.
Mr. Siddhartha Das, Adv.
....for appellant.

Ms. Smita Das De, Adv.
Mr. Prithu Dudhoria, Adv.
...for respondent.

1. The impugned common order dated 28th November, 2003 has been passed by the Income Tax Appellate Tribunal (ITAT), 'E' Bench, Kolkata in thirteen income tax appeals, out of which eight appeals were filed separately by the assessee before the Tribunal relating to assessment years 1987-88, 1988-89, 1993-94, 1994-95, 1995-96, 1996-97, 1997-98 and 1998-99 and five appeals were filed by the Deputy/Joint Commissioner of Income Tax, Special Branch, 17, Kolkata separately for assessment years 1986-87, 1995-96, 1996-97, 1997-98 and 1998-99. The Department's appeals for the

assessment years 1995-96 to 1998-99 were dismissed and the appeal for assessment year 1986-87 was partly allowed. Appeals filed by the assessee/appellant were partly allowed.

2. Aggrieved with the aforesaid common order of the Income Tax Appellate Tribunal, the appellant/assessee filed the present appeal i.e., the only appeal to challenge the common order of the ITAT relating to the assessment years 1987-88, 1988-89, 1993-94, 1994-95, 1995-96, 1996-97, 1997-98 and 1998-99. It also challenged in the same appeal the order relating to assessment year 1986-87 passed by the Tribunal partly allowing the appeal of the revenue.

3. Learned counsel for the appellant now states that the **appellants are pressing this appeal only with respect to assessment years 1987-88, 1988-89, 1995-96 and 1996-97.** He states that the appellants are not pressing this appeal with respect to the impugned order of the ITAT relating to rest of the assessment years.

4. This appeal was admitted by this Court by an order dated 11th December, 2008 on certain substantial questions of law.

5. Mr. J.P. Khaitan, learned Senior Advocate states that the appellant is pressing only substantial question of law No. (d) for the assessment order 1987-88, substantial questions of law (d) and (e) for the assessment year 1988-89, substantial questions of law (d), (f) and (g) for the assessment year 1995-96 and substantial question of law (b) for the assessment year 1996-97.

He further states that substantial questions of law No. (a) & (c) are not being pressed.

6. Accordingly, on a statement made by the learned Counsel for the appellant as afore-noted the appeal qua the substantial questions of law No. (a) & (c) stand dismissed.

7. The rest of the substantial questions of law on which the appeal is now being heard, are as under:-

- (b) Whether on a true and proper interpretation of the scheme of Government of Gujarat, the Tribunal was justified in law in holding that the subsidy amounting to Rs.17,28,843/- and Rs.12,65,490/- for the assessment years 1995-96 and 1996-97 respectively was liable to tax as a revenue receipt and was not on capital account outside the purview of taxation ?*
- (d) Whether the Tribunal was justified in law in upholding the disallowance of the payments made by the appellant during the previous years relevant to the assessment years 1987-88 and 1988-89 to Shriram Institute for Industrial Research and Tata Economic Consultancy Services for Research in connection with Acetal Resins and Hexamine, value added products which could be manufactured from the appellant's existing product formaldehyde, as unrelated to the appellant's existing business and its purported findings in that behalf are arbitrary, unreasonable and perverse ?*
- (e) Whether the Tribunal was justified in law in upholding the addition of Rs.2,82,573/- made in the assessment year 1988-89 on account of notional interest on investment made with M/s. Kamarhatty Co. Ltd. , rejecting the change in the method of accounting bona fide made by the*

appellant and followed regularly and consistently and its purported findings in that behalf are arbitrary, unreasonable and perverse ?

(f) Whether the Tribunal was justified in law in upholding the disallowance of the appellant's claim under sections 28 and/or 37(1) for deduction of the business advance of Rs.74,59,661/- made to the joint venture company M/s. Polypropylene India Ltd. written off in the appellant's accounts for the assessment year 1995-96 and its purported findings that the expenditure was capital in nature not incidental to the running of the appellant's business and disallowing the claim are arbitrary, unreasonable and perverse ?

(g) Whether the Tribunal was justified in law in upholding the disallowance of a sum of Rs.13,42,739/- out of the interest expenditure incurred by the appellant for the purposes of its business during the previous year relevant to the assessment year 1995-96 and its purported findings in that behalf and upholding taxation of the said amount as deemed interest on the advance made to M/s. Polypropylene India Ltd. in the earlier years out of the appellant's own funds are arbitrary, unreasonable and perverse?"

8. Since this is a composite appeal filed for the several assessment years involving some substantial questions of law including some common questions, therefore, we proceed to decide the appeal assessment year-wise.

Assessment Year 1987-88

9. The substantial question of law being pressed for this assessment year is the substantial question of law No.(d) which is reproduced below :

(d) Whether the Tribunal was justified in law in upholding the disallowance of the payments made by the appellant during the previous years relevant to the assessment years 1987-88 and 1988-89 to Shriram Institute for

Industrial Research and Tata Economic Consultancy Services for Research in connection with Acetal Resins and Hexamine, value added products which could be manufactured from the appellant's existing product formaldehyde, as unrelated to the appellant's existing business and its purported findings in that behalf are arbitrary, unreasonable and perverse ?

10. Undisputed facts of the present case are that the appellant/assessee is engaged in manufacture of chemical salt, yarn and textile. It has four manufacturing units. The assessee was manufacturing formaldehyde. The assessee engaged two consultants, namely, Shriram Institute for Industrial Research and M/s. Tata Economic Consultancy Services for Research to give market survey report for manufacturing of 'Hexamine' and 'Acetal Resins'. It was stated that 'Hexamine' is a value added product of formaldehyde which is already being manufactured by the assessee. The assessee paid a sum of Rs.2,51,000/- to M/s. Sriram Institute for Industrial Research and Rs.57,500/- to Tata Economic Consultancy Services for the aforesaid consultancy/research work. These two amounts were disallowed by the assessing officer on the ground that it is not revenue in nature being not connected with the business of the assessee. In appeal filed by the assessee the CIT(A) upheld the assessment order. Aggrieved, the assessee filed appeal before the Income Tax Appellate Tribunal, E-Bench, Kolkata which has been dismissed by the impugned order dated 28.11.2003.

11. Section 37 of the Income Tax Act, 1961 (hereinafter referred to as the Act) provides that any expenditure laid out or expended wholly or exclusively

for the purpose of business or profession shall be allowed in computing income chargeable under the head 'profits and gains of business or profession' provided the expenditure so incurred is not an expenditure of nature described in Sections 30 to 36 and is not in nature of capital expenditure or personal expenses of the assessee. Thus, the necessary requirement for deducting expenditure in computing the income chargeable under the head 'profits and gains of business or profession' is that the expenditure has been laid out or expended **wholly and exclusively for the purposes of business or profession.**

12. In the present set of facts, we find that the appellant/assessee has engaged the aforesaid two consultants for the purposes of manufacture and market assessment of 'Hexamine' and 'Acetal Resins'. The Tribunal has noted the submission of the appellant in paragraph 23 of the order that the 'Hexamine' is a value added product of formaldehyde which is being manufactured by the assessee company. Perusal of the two reports shows that the research and development was in respect of the existing line of business of the appellant company. The market survey was in connection with the existing line of the assessee's business of manufacture of chemical and expansion of existing business. Only in paragraph 25 of the impugned order the Tribunal has recorded its finding on the issue in question, by merely referring to certain judgments. The Tribunal has completely failed to record any finding adverse to the assessee to reject the contention based on records as noted in paragraph 23 of the order of the Tribunal. Even the Departmental

representative has not disputed before the Tribunal that 'Hexamine' is a value added product of formaldehyde which is already manufactured by the company. He merely submitted that the expenses were not related to the existing business of the assessee company. The Departmental representative of the respondent has not disputed before the Tribunal that formaldehyde is being manufactured by the assessee company. That apart, in its wisdom the assessee company has not taken further steps to go manufacture of 'Hexamine' and 'Acetal Resins'.

13. Thus, the necessary ingredients of Section 37 of the Act, 1961 that the expenditure laid out or expended is wholly and exclusively for purposes of business or profession of the assessee, stand satisfied. Therefore, the expenditure incurred by the assessee was an allowable expenditure under Section 37 of the Act, 1961.

14. For the reasons afore-stated, the substantial question of law (d) for the assessment year 1987-88 is answered in favour of the assessee and against the revenue. To this extent, the appeal deserves to be allowed.

Assessment Year 1988-89

15. In this assessment year, two substantial questions of law No.(d) and (e) are involved. The substantial question of law (d) has already been answered by us in favour of the assessee and against the revenue. Therefore, for this assessment year, i.e. 1988-89, the substantial question of law (d) is also answered in favour of the assessee and against the revenue. The appeal to

this extent deserves to be allowed.

16. So far as the substantial question of law No.(e) is concerned, the facts in brief are that the assessee was the tenant of one M/s. Kamarhatty Company Limited, Kolkata. Under some understanding, the assessee company gave a short-term loan of Rs.24 lakh to the aforesaid landlord. Subsequently, there arose some dispute between the assessee (tenant) and the aforesaid landlord, which resulted in institution of certain cases in City Civil Court and also in High Court. Since the assessee was not desirous of indulging in continuous litigation, therefore, in its wisdom, it entered into some arrangement with the landlord for return of the short-term loan of Rs.24 lakh given to the landlord. From the correspondences between the assessee (tenant) and the aforesaid landlord dated 10.05.1988, 26.05.1988, 26.05.1988, 26.05.1988 which are appearing at pages 141-145 of the paper book and also which were filed before the Income Tax Appellate Tribunal as noted by the Tribunal in paragraph 45 of its impugned order, it is evident that to recover the short-term loan of Rs.24 lakh and to end the dispute, the tenant (assessee) and the landlord have mutually agreed on certain terms. Under the mutual agreement, the assessee (tenant) has surrendered the tenancy of the office space in question with effect from 01.02.1987 and agreed to receive the principal amount of the short-term loan of Rs.24 lakh in full and final settlement and to waive the entire unpaid interest on the aforesaid short-term loan. The landlord agreed to return only the principal amount of the short-term loan i.e. Rs.24 lakh and withdraw all cases filed against the

assessee company or its sister concerns in the High Court at Calcutta and in City Civil Court at Calcutta or in any other court. The landlord also agreed that he shall have no claim either against the assessee company or against its sister concerns or against Sri S.S. Kanoria. Thus, as mutually agreed by the parties, no interest was receivable by the assessee company from the landlord in respect of the above-noted short-term loan for the assessment year 1988-89. Under the circumstances, the assessee company has not shown accrued interest of Rs.2,82,573/- in its books of account and instead in the schedule to the accounts, a note was written that interest shall be accounted for on receipt basis. The entry so made is supported by strong circumstances inasmuch as it appears from the correspondences between the landlord and the tenant as referred above that some negotiation was going on between them which took a final shape on 26th May 1988 i.e. just after the close of the financial year 1987-88 corresponding to assessment year 1988-89.

17. Despite having noted the aforesaid correspondences and the mutual agreement between the landlord and the tenant (assessee), the Tribunal has not taken pain even to record its finding. It simply noted the facts in paragraph 44 and without disbelieving the aforesaid correspondences/mutual agreement between the landlord and the tenant, it upheld the order of the CIT (A). Under the circumstances, the appeal against the impugned order of the Tribunal insofar as it upheld the addition of Rs.2,82,573/- on account of accrued interest, deserves to be allowed and the substantial question of law (e) deserves to be answered in favour of the assessee and against the revenue.

Assessment year 1996-97:

18. In this assessment year the only substantial question of law involved is substantial question of law no. (b) which is reproduced below:

(b) Whether on a true and proper interpretation of the scheme of Government of Gujarat, the Tribunal was justified in law in holding that the subsidy amounting to Rs.17,28,843/- and Rs.12,65,490/- for the assessment years 1995-96 and 1996-97 respectively was liable to tax as a revenue receipt and was not on capital account outside the purview of taxation?

19. Brief facts having bearing on the afore-noted substantial question of law are that the appellant/assessee has a manufacturing unit at Ankleshwar, District- Bharuch (Gujarat). There was a scheme of the State Government for attracting the industries in backward areas which provided for capital subsidy. Allured with the scheme of the State Government for capital subsidy, the appellant/assessee had set up a unit under diversification programme. The assessee invested in fixed assets Rs.16.92 lakhs for building, Rs.325.57 lakhs for plant and machinery, Rs.32.50 lakhs for electrification and Rs.23.97 lakhs for erection; totalling to Rs.398.96 lakhs. The State cash subsidy towards fixed assets was @ 15% under the 1986-91 scheme for diversification project subject to maximum amount of subsidy of Rs.20 lakhs. The appellant/assessee undertook diversification project and invested in fixed assets as aforesaid and applied for State cash subsidy under the aforesaid scheme which was sanctioned by the State Level Committee by letter dated 11.01.1994. Accordingly, the Joint Commissioner of Industries

directed the General Manager, District Industries Centre, Bharuch vide order dated 28.03.1994 to disburse state cash subsidy of Rs.20 lakhs to the appellant/assessee on eligible assets of Rs.398.96 lakhs.

20. Since industries setting up projects under the aforesaid state cash subsidy scheme were facing lot of problems in disbursement of subsidy amount, therefore, the State Government evolved a mechanism for payment of cash subsidy by providing exemption from payment of sales tax to the tune of Rs.30 lakhs in lieu of total payable state cash subsidy of Rs.20 lakhs. Consequently, letter dated 12.09.1994 was written by the Dy. Industries Commissioner and General Manager, District Industries Centre, Bharuch to the appellant/assessee which is reproduced below:

“No.DIC/BH/SCA/124
District Industries Centre
Behind Falshrut Society
BHARACH – 392

Date : 12.09.1984

*M/s. Kanoria Chemicals & Industries Limited,
Plot No.3507, G.I.D.C.
Ankleshwar*

*Sub :: Regarding benefit for additional sales-tax
in lieu of state cash assistance.*

- - -
Dear Sirs,

*In reference to above we are to state that **for attracting the industries in backward areas benefits of subsidy** and sales tax are given from time to time under incentive schemes of State Govt. As a result of this liberal policy and industrialisation in the State **liability of payable subsidy to the industries established in the backward areas becomes higher much more than estimate. As such, the industrialists have to wait some time for getting the***

subsidy. Taking this situation into consideration State Govt. has decided to put into implementation scheme of additional sales tax as option of subsidy to avoid obstacle in the State's industries development and the subsidy amount receivable to industries from optional means to State Government. Resolutions in this respect have also been circulated.

Under this optional scheme industries will be entitled for benefits of additional sales tax % 15% of the receivable subsidy amount. These additional benefits can be enjoyed by way of sales tax exemption or delayed payment. Besides, one year benefit will be given for enjoying these benefits. Due to this optional scheme industries can create funds which will be helpful in executive capital.

You have been sanctioned of subsidy of Rs.20,00,000/- by this office which is to be paid. In view of the present situation, there will be considerable delay in disbursement. As such, above scheme is very attractive and thereby you will be easily running your unit. You are requested to please fill the necessary details in the application form enclosed with this letter. You are to inform to contact this office if you require more information in this regard. Immediate action will be initiated if the filled in application is sent within seven days.

Yours faithfully,
Sd/-
Dy. Industries Commissioner
& General Manager,"

21. Thereafter, an eligibility certificate dated 05.10.1994 for incentive of sales tax in lieu of payable state cash subsidy was issued by the Joint Industries Commissioner (Incentive) to the appellant which is reproduced below :

"IC/PRO-2/S.T./710/0166

Name & Address of Office:
Office of Industries Comm.
Udyog Bhavan, Block No.1/2,
Sector-11, GANDHINAGAR

Date: 05/10/1994

Eligibility Certificate for incentive of sales-tax in lieu of payable State Cash Assistance : M/s. Kanoria Chemicals & Inds. Ltd. 3407, GIDC Estate, Ankleshwar, Dist.- Bharuch

1. This is to certify that above referred unit is found eligible for getting above mentioned benefits under resolution of Industry & Mines Deptt. Govt. of Gujarat and amendments thereof Abiding by the provisions of the resolutions these benefits are given,
 - a) Res Ref No. : INC 1093-1175-I dt. 19/07/94.
 - b) Res Ref No. : INC 1086-706() I dt. 05/05/86
Res Ref No. : INC 1086-706 (2) I dt. 06/05/86
 - OR
 - c) Res Ref No. : INC 1090-1023-(1)I dt. 16/10/90.
Res Ref No. : INC 1090-1023-(2)I dt. 16/10/90
 - d) Eligibility Cert Ref No.:
 - (1) IC-INC2-T 4-9. T – 86-91-1907 dt. 19/03/94.
 - (2) IC-INC2-S. T.-T –4-710-2195 dt. 31/03/94.
2. A unit of this eligible certificate to be received maximum limit of sales-tax exemption of Rs.30 lacs , □ 20 lacs at the rate of 15% **in lieu of total payable state cash assistance of Rs.20 lacs.**
3. As mentioned in para (1), the time limit of enjoying maximum limit is 04/10/1994 to 31/12/2000 or till one year of the date of getting these benefits under certificate, which res first till that the certificate shall be effec-
4. eligible certificate shall comply to all the conditions of the certificate now to be issued by Sales-tax Commissioner.
5. **After issue of this eligibility certificate, unit will have no claim of the subsidy which has been sanctioned vide Sanction letter No.IC-SUB-SLC-Section-805-113 dt,11/01/94, resolution no.IC-1036-706-(1)I dt. 05/06/86.**
6. This unit has Sales-tax registration no.42111635 dt. 08/10/82 under Gujarat Sales-tax Act 1969 and manufactures below mentioned category/sort material for sale.
7. A unit availing benefit of delayed sales-tax payment, shall have to pay the amount of delayed sales-tax in six equal monthly instalments after two years of the date of maximum limit under certificate or time period, whichever is enjoyed earlier.

(A. B. PANCHAL)

JT. INDUSTRTIES COMMISSIONER (INCENTIVE)

Cc to.: Kanoria Chemicals , Ankleshwar

CC TO : Sales-tax Commissioner, Ahmedabad
 Asstt. Sales-tax Commissioner, DV-6,
 Behind Byuilding of Chamber of Commerce,
 2nd Floor, Makaipul, Nanpura, Surat
 General Manager, DIC, Bharuch

Since the unit has got additional sales-tax incentive against state cash assistance, now subsidy not to be paid to the unit against said disbursement letter. For putting necessary note in the concerned records.

Disbursement Table No. 8 ...for information and action."

22. The state cash subsidy sanctioned in favour of the appellant/assessee and communicated to it by the Joint Commissioner of Industries (Incentive) by letter dated 28.03.1994 is also reproduced below for ready reference:

"To
 The General Manager,
 District Industries Centre,
 Bharuch,

Sub : Disbursement of State Cash Subsidy @ 15 % under 1986 – 91 Scheme for Diversification project.

You are hereby authorised to make disbursement of State Cash Subsidy amounting to Rs.20,00,000/- (Rupees Twenty lach only)) to M/s. Kanoria Chemicals of Industries, 3407, GIDC, Ankleshwar, dist. Bharuch As per the following details.

1 (A)	No. & date of SLC Meeting where sanction is accorded for following fixed capital investment	No. 152 Dt. 23-12-93
(a)	Land	Rs. -
(b)	Building	Rs. 16.92 lacs
(c)	Plant & Machinery	Rs. 325.57 "
(d)	Electrification	Rs. 32.50 "
(e)	Erection charges	Rs. 23.97 "
(f)		Rs.

		<i>Total</i>	<i>Rs.</i>	<i>398.96 lacs</i>
	(B) <i>Total amount of subsidy sanctioned</i>	<i>Rs.</i>		<i>20/- lacs (Max.)</i>
2	<i>Eligible fixed assets considered for disbursement of subsidy</i>			
	(a) <i>Land</i>			<i>-</i>
	(b) <i>Building</i>			<i>16.92 Lacs</i>
	(c) <i>Plant & Machinery</i>			<i>325.57 "</i>
	(d) <i>Electrification</i>			<i>32.50 "</i>
	(e) <i>Erection charges</i>			<i>23.97 "</i>
	(f)			
		<i>Total</i>	<i>Rs.</i>	<i>398.96 "</i>
3	(A) <i>Amount of subsidy disbursed previously</i>			
	1. <i>Order No.</i>	<i>Rs.</i>		<i>Nil</i>
	2. <i>Order No.</i>	<i>Rs.</i>		<i>Nil</i>
		<i>Total</i>	<i>Rs.</i>	<i>Nil</i>
	(B) <i>Amount of subsidy to be disbursed under this order</i>	☐		<i>20/- lacs</i>
	(C) <i>Total amount of subsidy disbursed including this order</i>			

(A.B. Panchal)
Jt. Commissioner of Industries (Incentive)

Copy to :

(1) M/s. Kanoria Chemicals of India ltd.
3407, GIDC Ankleshwar, Dist. Bharuch

(2) Sales Tax File."

23. From the facts as briefly noted above, it is evident that the 1986-91 scheme for new/expansion/diversification project brought by the Government of Gujarat provided for state cash subsidy on eligible fixed

assets. Pursuant to the scheme, the appellant/assessee undertook a diversification project and applied for state cash subsidy. Cash subsidy of Rs.20 lakhs was sanctioned to the appellant/assessee and an order dated 28.03.1994 was issued by the Joint Commissioner of Industries (Incentive) to the appellant/assessee communicating that state cash subsidy of Rs.20 lakhs shall be disbursed to it on eligible fixed assets of Rs.398.96 lakhs.

24. Subsequently, the State Government in its wisdom took a decision to change the mechanism for payment of aforesaid subsidy and, accordingly, communicated to the appellant/assessee by the afore-quoted letter dated 12.09.1994 followed by eligibility certificate dated 05.10.1994, both of which have been reproduced above. In the aforesaid two letters dated 12.09.1994 and 05.10.1994, it was specifically mentioned that for attracting the industries in backward areas benefits of subsidy and sales tax are given from time to time under incentive scheme of the state Government and since liability of payable subsidy to the industries established in the backward areas becomes higher much more than estimate due to which the industrialists have to wait some time for getting the subsidy. Taking this situation into consideration, the State Government has decided to put into implementation a scheme of additional sales tax as option of subsidy to avoid obstacle in the development of industries in the State and payment of subsidy amount receivable by industries from optional means of the State Government. Thus, the Government of Gujarat has evolved a mechanism by way of optional scheme for the payment of subsidy amount so that industries

can create funds in their capital and thereby the considerable delay in disbursement of the subsidy may be avoided so that industrial units may run easily.

25. Thus, the very purpose and object of the State scheme “1986-91 Scheme for New/Expansion/Diversification Project” was to attract industrialists in backward areas and to achieve that object state cash subsidy on eligible fixed assets subject to maximum of Rs.20 lakhs was provided. However, the assessing officer while passing the assessment order has treated the aforesaid capital subsidy to be revenue receipt and, accordingly, added the subsidy so received in income in the hands of the appellant/assessee. The Tribunal has also upheld the aforesaid subsidy to be a revenue receipt in the hands of the assessee which caused the appellant/assessee to come up in appeal before this Court under Section 260A of the Income Tax Act, 1961. Thus, the sole question is as to whether the subsidy in question is a capital receipt or revenue receipt?

26. To determine whether the subsidy received by an assessee is a capital or a revenue receipt, the test is the character of the receipt in the hands of the assessee has to be determined first with respect to the purpose for which the subsidy was given. In other words, in such cases one has to apply the purpose test. The point of time at which the subsidy is paid is not relevant. The form of subsidy and the source is also immaterial. If the object of a subsidy scheme is to enable the assessee to run the business more profitably, then the receipt shall be of revenue in nature. **But if the object of the**

assistance under the subsidy scheme was to enable the assessee to set up a new unit or to expand the existing unit, then the receipt of the subsidy would be of capital nature. Therefore, it is the object for which the subsidy/assistance is given which determines the nature of the incentive subsidy. The form or mechanism through which the subsidy is given are not relevant. In the present set of facts, as already discussed above, the subsidy in question was sanctioned and given by the Government of Gujarat to the appellant/assessee for setting up industries in a backward area. The main object of subsidy scheme was attracting the industrialists in backward areas. The subsidy was payable to a maximum of Rs.20 lakhs on eligible fixed assets. Therefore, all these facts leave no manner of doubt that the object of the assistance under the subsidy scheme was to enable the appellant/assessee to diversify its unit and the subsidy was payable on eligible fixed assets only. Thus, the subsidy so received by the appellant/assessee is clearly a capital receipt.

27. The view being taken by us is also supported by the law laid down by the Hon'ble Supreme in the case of Commissioner of Income Tax v. Ponny Sugar & Chemicals Limited reported in (2008) 306 ITR 392 (SC). The relevant portion of the judgement in the case of Ponny Sugar & Chemicals Limited(supra) is reproduced below :-

*“In our view, the controversy in hand can be resolved if we apply the test laid down in the judgment of this Court in the case of Sahney Steel and Press Works Ltd. In that case, on behalf of the assessee, it was contended that the subsidy given was **up to 10 per cent of the capital investment calculated on the basis of the quantum of investment in capital and, therefore, receipt of such subsidy was on capital account and not on revenue account.** It was also urged in that case that subsidy granted on the basis of refund of sales tax on raw materials, machinery and finished goods was also of capital nature as the object of granting refund of sales tax was that the assessee could set up new business or expand his existing business. The contention of the assessee in that case was dismissed by the Tribunal and, therefore, the assessee had come to this Court by way of a special leave petition. It was held by this court on the facts of that case and on the basis of the analysis of the scheme therein that the subsidy given was on revenue account because it was given by way of assistance in carrying on of trade or business. On the facts of that case, it was held that the subsidy given was to meet recurring expenses. It was not for acquiring the capital asset. It was not to meet part of the cost. It was not granted for production of or bringing into existence any new asset. The subsidies in that case were granted year after year only after setting up of the new industry and only after commencement of production and, therefore, such a subsidy would only be treated as assistance given for the purpose of carrying on business of the assessee. Consequently, the contentions raised on behalf of assessee on the facts of that case stood rejected and it was held that the subsidy received by Sahney Steel could not be regarded as anything but a revenue receipt. Accordingly, the matter was decided against the assessee. The importance of the judgment of this Court in Sahney Steel case lies in the fact that it has discussed and analysed the entire case law and it has laid down the*

*basic test to be applied in judging the character of a subsidy. **That test is that the character of the receipt in the hands of the assessee has to be determined with respect to the purpose for which the subsidy is given. In other words, in such cases one has to apply the purpose test. The point of time at which the subsidy is paid is not relevant. The source is immaterial. The form of subsidy is immaterial.** The main eligibility condition in the scheme with which we are concerned in this case is that the incentive must be utilised for repayment of loans taken by the assessee to set up new units or for substantial expansion of existing units. On this aspect there is no dispute. **If the object of the subsidy scheme was to enable the assessee to run the business more profitably, then the receipt is on revenue account. On the other hand, if the object of the assistance under the subsidy scheme was to enable the assessee to set up a new unit, or to expand the existing unit, then the receipt of the subsidy was on capital account. Therefore, it is the object for which the subsidy/assistance is given which determines the nature of the incentive subsidy. The form or the mechanism through which the subsidy is given are irrelevant.***

28. Subsequent decision of the Government of Gujarat providing for an optional mechanism for payment of subsidy by way of sales tax exemption in lieu of the State Capital Subsidy, shall not change the very nature of the subsidy. The subsidy sanctioned to the appellant/assessee by the Government of Gujarat under the scheme as aforesaid, was a capital subsidy and shall continue to be capital subsidy despite the change in mechanism for its payment by the State Government to an industrialist/appellant-assessee.

29. For all the reasons afore-stated, we find that the Income Tax Appellate Tribunal has committed a manifest error of law to hold the subsidy in question to be revenue in nature. Consequently, the substantial question of law no.(b) as reproduced above is answered in favour of the appellant assessee and against the revenue. To this extent the impugned order of the income Tax Appellate Tribunal is liable to be set aside and the addition of the subsidy made by the assessing officer in the income of the appellant-assessee is deleted.

Assessment Year 1995-96

30. In this assessment year, three substantial questions of law nos. (b), (f) and (g) are involved, which are reproduced below:-

“(b) Whether on a true and proper interpretation of the scheme of Government of Gujarat, the Tribunal was justified in law in holding that the subsidy amounting to Rs.17,28,843/- and Rs.12,65,490/- for the assessment years 1995-96 and 1996-97 respectively was liable to tax as a revenue receipt and was not on capital account outside the purview of taxation?”

“(f) Whether the Tribunal was justified in law in upholding the disallowance of the appellant’s claim under sections 28 and/or 37(1) for deduction of the business advance of Rs.74,59,661/- made to the Joint Venture company M/s. Polypropylene India Ltd. written off in the appellant’s accounts for the assessment year 1995-96 and its purported findings that the expenditure was capital in nature not incidental to the running of the appellant’s business and disallowing the claim are arbitrary, unreasonable and perverse?”

“(g) Whether the Tribunal was justified in law in upholding the

disallowance of a sum of Rs.13,42,739/- out of the interest expenditure incurred by the appellant for the purposes of its business during the previous year relevant to the assessment year 1995-96 and its purported findings in that behalf and upholding taxation of the said amount as deemed interest on the advance made to M/s. Polypropylene India Ltd. in the earlier years out of the appellant's own funds are arbitrary, unreasonable and perverse?"

31. The substantial question of law No.(b) on identical set of facts in the case of the assessee itself has already been answered above by us while dealing with the said question in respect of assessment year 1996-97. Accordingly, the substantial question of law no.(b) is answered in favour of the assessee and against the revenue and to that extent the impugned order of the Tribunal is liable to be set aside and the addition made in this regard by the assessing officer in the hands of the assessee is deleted.

32. So far as question No.(f), as reproduced above, is concerned, we find that the Tribunal has dealt with this issue in paragraphs 46 to 51 of the impugned order, which are reproduced below:-

"46. In ground no.2 the assessee has challenged the disallowance of bad debts amounting to Rs.74,59,661 in respect of the amount advanced to Polypropylene India Ltd.

47. According to the AO this advance does not come within the ambit of sec. 36(1)(vii) of the Act. The assessee was engaged in the manufacture and sale of chemicals and textiles. Lending of money was not the main activity of the assessee and hence the advance not being a trade debt was disallowed. The CIT (A) agreed with the

finding of the AO and confirmed the disallowance.

48. The Ld. authorized representative Sri R. Salarpuria, appearing on behalf of the assessee, submitted that the assessee-company had entered into a joint venture business along with PICU for setting up a joint venture company known as Polypropylene India Ltd. The investment in this joint venture of business was made by the assessee from time to time in earlier years the project ultimately could not be implemented and the entire amount became bad and was written off. Since this advance/investment made in the joint venture was a business venture, the amount written off was allowable as a business deduction either u/s 28 or u/s 37(1) of the Act. The ld authorized representative relied on the orders of Hon'ble Calcutta High Court reported in 221 ITR 420 as well as 203 ITR 415 in support of his submissions.

49. Ld. Departmental representative, on the other hand, supported the findings of the authorities below and submitted that there was no relation between the normal businesses activities of the assessee and the advance made to Polypropylene India Ltd. Such being the case, by no stretch of imagination, the debt of Rs. 7459,661 could not be considered as a revenue expenditure in the hands of the assessee.

50. We have considered the rival submissions and gone through the necessary material in this regard. Ld. authorized representative relied on the order of the Hon'ble Calcutta High Court in the case reported in 221 ITR 420. The case decided by the Hon'ble Calcutta High Court related to the expenditure incurred for obtaining feasibility report for manufacture of raw materials. The project did not materialize and, therefore, the expenditure would be considered to be allowable. In the present case, the facts are totally different and the entire new project was to be undertaken in the form of doing business

with M/s. Polypropylene India Ltd. and the project did not take off at all. In view of this fact this partakes the nature and character of capital expenditure which cannot be allowed either u/s 28 or u/s 37(1). We find that the reference by ld authorized representative to the decision of the Hon'ble Calcutta High Court in the case reported in 203 ITR 415 is mis-quoted 203 ITR 415 is decided by the Hon'ble Rajasthan High Court and this case has no applicability in the present case. Therefore, the reliance upon this case is totally misplaced.

51. In view of the finding as above, we do not find any merit in the submission of the assessee that the bad debt amounting to Rs. 74, 59,661 could have been claimed by the assessee as business expenditure during this year. This ground taken by the assessee is, therefore, dismissed.”

33. Learned counsel for the appellant assessee submits that the appellant assessee entered into a joint venture business with Pradeshia Industrial and Investment Corporation of Uttar Pradesh (PICUP) which is an instrumentality of the State of Uttar Pradesh, to set up a project to manufacture polypropylene. The project could not proceed for reason that much larger projects were being established by others and in that situation, the project sought to be implemented under the joint venture appeared to be quite unviable. Therefore, the joint venture formed by PICUP and the appellant assessee decided in their wisdom to give up the joint venture project. In the process of attempt to establish the aforesaid joint venture project, the appellant assessee advanced to the joint venture company namely Polypropylene (India) Limited a sum of Rs.74,59,661/- which became

unrecoverable as the aforesaid joint venture went into liquidation and ultimately it was liquidated by Allahabad High Court by order dated 23.03.1996 in Winding-up Petition No.3 of 1995.

34. Learned counsel for the appellant assessee, therefore, submits that since the aforesaid amount clearly became bad debt, therefore, the assessee has not committed any error to write it off, but the assessing officer and the Tribunal have committed manifest error of law to disallow it and to add it in the income of the assessee.

35. Smita Das De, learned senior standing counsel for the respondent, has drawn our attention to paragraphs 10 to 10.6 of the assessment order and internal page 5 of the order passed by the Commissioner of Income Tax (Appeals). She submits that the appellant assessee has advanced a sum of Rs.74,59,661/- to the joint venture company for setting up a new project and therefore the purpose for which the money was advanced was itself capital in nature. Therefore, by no imagination, the amount in question would fall within the meaning of the words 'bad debt' as used in Section 36(1)(vii) of the Income Tax Act, 1961. She submits that the amount in question is neither bad debt falling under the aforesaid Section 36(1)(vii) nor it is an allowable expenditure under Section 37 of the Act. Therefore, the assessing officer, the Commissioner of Income Tax (Appeals) and the Tribunal have not committed any manifest error of law to disallow it and to add it in the income in the hands of the appellant assessee.

36. We have carefully considered the submissions of the learned Counsel appearing for the parties and perused the record of the appeal.

37. We find that undisputedly, the appellant/assessee and Pradeshia Industrial and Investment Corporation of Uttar Pradesh (PICUP) have formed a joint venture company named *M/s. Polypropylene India Limited*. To this joint venture company, the appellant/assessee advanced a sum of Rs.74,59,661/-. The joint venture project could not come up and ultimately the aforesaid joint venture company itself was liquidated by order dated 26.3.1996 in winding up company petition no. 3 of 1995 passed by the Allahabad High Court, which is reproduced below:

“The petitioner’s company was incorporated on 23rd December, 1986 under the Companies Act, 1956 as company Limited by Shares having its registered office at Lucknow, Uttar Pradesh. This company was promoted by Kanoria chemicals and industries Limited and the Pradeshia Industrial and Investment Corporation of Uttar Pradesh Limited (FICUF). Both the promoters of the Company were size of the view that in the existing economic circumstances, the project is no more viable, therefore, they decided to drop the same. A special resolution was passed by the petitioner’s company in accordance with Section 189 of the Companies Act, 1956, at an extra ordinary general meeting held on 28th February, 1995 unanimously resolving that the company be wound up by the court. A copy of said resolution has been filed as Annexure “B” to this petition. The aforesaid resolution is said to have been passed for the reason that the company has failed to commence any business activities since its incorporation that the company is no longer economically or financially viable due to various factors. Pursuant to the company of

the said resolution, the company petition for winding up the petitioner's company voluntarily has been failed.

This petition was admitted on 24th March, 1995 and notices were issued in accordance with Rules 96 and 99 of Companies (Court) Rules 1050. The notices were duly published in the Daily News Papers. Pioneer and Swatantra Bharat on 5th April, 1995. The copies of the said advertisement have been placed on record. The notices were also published in the State of U.P. Gazettee dated 15th April, 1995.

Hence has put in appearance to this case nor any objection has been filed pursuant to the publication of the notices.

I have heard learned counsel for the petitioners and am satisfied that all the requisite steps as required under relevant rules for winding up of two company voluntarily have been taken and there is no objection to the same. The company has not carried out any business as also no creditor has raised any claim against the petitioner's company. The company petition is accordingly allowed."

38. The question that arises for our consideration is as to whether the aforesaid sum of Rs.74,59,661/- is 'bad debt' within the meaning of Section 36(1)(vii) or it is an allowable expenditure under Section 28 or Section 37 of the Income Tax Act, 1961. According to the appellant/assessee, the aforesaid amount is an expenditure allowable under Section 28 and Section 37 whereas, according to the learned counsel for the respondent/department the aforesaid amount is not allowable as expenditure and it is not even bad debt under Section 36(1)(vii) of the Act of 1961.

39. In other words, the question is of whether the unrecovered advance of

Rs. 74,59,661/- is allowable expenditure under Section 28 or Section 37 of the Act of 1961?

40. It is relevant to note that before the assessing officer the appellant/assessee has claimed that the aforesaid sum of Rs.74,59,661/- has been written off as bad debt but the said claim was not allowed by the assessing officer. The findings recorded by the assessing officer in this regard are reproduced below :

“10. Bad Debt

In course of assessment proceedings, the A/R. of the assessee furnished details of Bad Debt written off during the year. The details includes the name of M/s. Polypropylene India Ltd. against which a sum of Rs.74,59,661/- was shown. Query was raised regarding the nature of such debt. In reply to the same, the A/R. of the assessee stated that the said amount was advanced to M/s. Polypropylene India Ltd. (which is a sister concern) for putting up a project for the manufacturing of polypropylene jointly with M/s. Pradeshia Industrial & Investment Corporation of U.P. Ltd. This amount represents expenses and advances made to the company for the said project. The polypropylene project could not be pursued due to various reasons and ultimately the project was not successful. M/s. Polypropylene India Ltd. have filed application for winding up of the company and there was no asset of the company for disbursement. Under this circumstances assessee i.e., lender company had to write off the amount paid to them.

10.1 But this advance does not come within the ambit of section 36(1)(vii). The main business of the assessee concern is to manufacture and sale of chemicals items and textile. The relevant provision of this section 36(1)(vii) reads as under :-

“Subject to the provisions of sub-section (2), the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year;”

10.2 The main components of this section is ‘Bad Debt’ which was written off during the previous year. But a loan given to a sister concern cannot be covered under this Section. Lending money is not the main activities of the company. It was not a trade-debt arises out of business activities. Therefore, the claim is not allowable.

10.3 The similar principle was laid down in the judgment of *Curties –vs- Old Field & Co. (JG) 1925 – 9 TC 319*.

“When the rules speaks of a bad debt, it mans a debt which is a debt and should have come into balance-sheet as a trading debt in this trade that is in question and that it is bad. It does not really mean bad debt, when it was a good debt would not have into swell into the Profits.” Rowlatt J.

10.4 According to Justice Rowlatt only trade debt which have come to swell the profits can be treated as debt for this purpose. In instant case, the same is an advance made to a company which is otherwise a sister concern, and same was not made in course of their business activities. On the other hand, lending money is not a principal business activities of the company. Therefore, the claim is disallowed.

10.5 The Supreme Court has also expressed the similar view in the case of *Thomas & Co. Ltd. (AV) –vs- C.I.T. (48 ITR 67)*.

10.6 Since the company has taken loan from various sources during the previous year relevant to the assessment year on which

total interest of Rs.12,81,33,000/- was debited in the Profit & Loss Account, interest @18% is disallowed on the loan amount of Rs.74,59,661/- written off during the year which comes to Rs.13,42,739/-."

41. In appeal before the Commissioner of Income Tax [A] the appellant/assessee attempted to shift the stand by pleading in ground no.7 of the Memorandum of Appeal that in the event the aforesaid amount is not allowable as bad debt then it may be allowed as business expenditure. The learned CIT[A] dealt with ground no.7 of the Memorandum of Appeal and held as under :

"As regards ground no.7, the appellant company claimed Rs.74,59,661/- as bad debt which the A.O. has not accepted. In fact, the amount does not represent either a bad debt or business expenditure as the said amount had been paid to a subsidiary of the appellant company to enter into a joint venture agreement with Govt. of U.P. for manufacturing of polypropylene and hence the said amount neither represented bad debt arising on account of sales or business expenditure on account of advances made towards purchases of raw materials".

42. In appeal before the Income Tax Appellate Tribunal the appellant/assessee again took the stand that the aforesaid sum of Rs.74,59,661/- is bad debt and, therefore, the assessee has not committed any error to write it off. At the same time, he claimed that the aforesaid sum is allowable as expenditure either under section 28 or under section 37[1] of the Act, 1961. The stand so taken so rejected by the Tribunal, holding that

the aforesaid amount of Rs.74,59,661/- could neither be claimed by the assessee as bad debt nor as business expenditure.

43. Learned counsel for the appellant/assessee has relied upon a judgment of Bombay High Court in Mahindra and Mahindra Ltd. vs. Commissioner of Income Tax [2023] 456 ITR 723 [Bom] and two judgments of this Court in Commissioner of Income Tax, Kolkata-III vs. ITC Ltd. [2016] 237 Taxman 533 [Cal.] and Binani Cement Ltd. vs. Commissioner of Income Tax & Anr. [2016] 380 ITR 116 [Cal]. Learned counsel for the respondent has relied upon a judgment in Principal Commissioner of Income Tax 6 v. Khyati Realtors Pvt. Ltd. (2022) 447 ITR 167 (SC).

44. On facts of the present case we find that the appellant/assessee is a company engaged in manufacture of certain chemicals such as caustic soda, bleaching powder, benzene, hexa chloride etc. having its unit at Renukoot [Uttar Pradesh] and Ankleshwar in Gujarat and its textile division also in Gujarat. The appellant/assessee and the PICUP formed a joint venture company, namely, Polypropylene India Ltd. This joint venture project could not come up since both the aforesaid promoters of the joint venture company found that the project is no more viable and, accordingly, the project was stopped and a special resolution was adopted by the joint venture company in an extra-ordinary general meeting dated 28.2.1995, that the joint venture company be wound up by the court. The joint venture company could not commence any business activity since its incorporation. Under the circumstances, the Winding-up Company Petition No.3 of 1995 was allowed

by the Allahabad High Court by an order dated 26.3.1996 and the joint venture company was wound up. It was found by the Allahabad High Court that no one has raised any claim against the joint venture company.

45. According to the appellant/assessee, it advanced a sum of Rs.74,59,661/- to the aforesaid joint venture company which became unrecoverable as the joint venture company was wound-up. Therefore, the appellant/assessee has written off this amount standing in the books of accounts and, accordingly, claimed it as bad debt in the assessment proceedings before the assessing officer which was not allowed. Subsequently, the appellant/assessee claimed it as a business expenditure and before the CIT[A] and the ITAT, which was rejected.

46. Learned counsel for the appellant/assessee himself has stated before us that the aforesaid sum of Rs.74,59,661/- is not bad debt. Thus, the appellant/assessee has left its claim that the aforesaid amount is a bad debt. Therefore, we hold that the aforesaid sum of Rs.74,59,661/- is not bad debt allowable under section 36 of the Income Tax Act, 1961 as per own claim of the appellant/assessee.

47. We find that the aforesaid sum of Rs.74,59,661/- neither satisfies the conditions of section 36[1][vii] read with sub-section [2] of section 36 of the Income Tax Act, 1961, nor it is a business expenditure. Even no material could be brought on record by the appellant/assessee either before the assessing officer or before the CIT or ITAT that the aforesaid sum of

Rs.74,59,661/- was incurred on account of any commercial expediency. The appellant/assessee being a promoter of the aforesaid joint venture company had invested or advanced the aforesaid sum of Rs.74,59,661/- which became unrecoverable due to winding up of the joint venture company, is a capital loss to the appellant/assessee.

48. Learned counsel for the appellant/assessee has relied upon a judgment in the case of Mahindra and Mahindra Ltd. [supra] of Bombay High Court. The facts of that case were that Mahindra and Mahindra Ltd. incurred certain expenses towards the salaries of staffs and officers, statutory charges, security arrangements, rents etc. during the period of suspension of operation and till winding-up order was passed against the jointly promoted company namely, MMC and the expenses were incurred and certain other payments were made by Mahindra & Mahindra Ltd. due to commercial expediency to preserve and protect the value of goodwill attached to it. In the present set of facts nothing could be brought on record by the appellant/assessee at any stage of the proceedings that the aforesaid sum of Rs.74,59,661/- is an amount which was incurred by it due to commercial expediency to preserve and protect the value of goodwill attached to it, if any. Even the appellant/assessee has not produced any agreement for advancing Rs.74,59,661/- to the joint venture company or the nature, object and purpose of the aforesaid alleged advance amount. Therefore, the appellant/assessee has completely failed to lead any evidence to establish either that the aforesaid amount was advanced due to commercial expediency

or that it was spent for the purpose and in connection with any business of the appellant/assessee. Therefore, the aforesaid sum of Rs.74,59,661/- is neither allowable as an expenditure under section 28 or section 37 nor it is allowable as bad debt under section 36 of the Act of 1961. Therefore, the case of Mahindra and Mahinidra [supra] does not have even persuasive value in the matter of the appellant/assessee.

49. The next judgments in the case of ITC Ltd. [supra] and in the case of Binani Cement Ltd. [supra] relied upon by the learned counsel for the appellant/assessee are also clearly distinguishable on facts of the present case and therefore, both the judgments are of no help to the appellant/assessee.

50. In the case of Commissioner of Income Tax, Bombay Vs. M/s. Abdullabhai Abdulkadar AIR 1961 SC 701 [Para 9], Hon'ble Supreme Court while interpreting the provision of bad debt under section 10[2][xi] of the Income Tax Act, 1922 held that **"in every case the test is, was the debt due as an incident to the business; if it is not of that character it will be a capital loss"** In the present set of facts we find that the aforesaid sum of Rs.74,59,661/- so advanced to the joint venture company as per their own case set up by the appellant/assessee, the advance given to the joint venture company cannot be said to be an instance of the business of the appellant/assessee. Therefore, the investment so made by the appellant/assessee in the aforesaid joint venture company or the advance given became a capital loss when the joint venture company was liquidated.

Therefore, the amount in question being a capital loss is neither a deductible expenditure under section 37 nor it is a bad debt under section 36 [1][vii] of the Act of 1961.

51. For all the reasons afore-stated the substantial question of law no.(f) is answered in favour of the revenue and against the assessee. Consequently, the appeal of the appellant on substantial question of law No.(f) deserves to be dismissed.

Substantial question of law no.(g)

52. In so far as substantial question of law no. (g) is concerned, we find that the assessing officer has computed deemed interest at the rate of 18% on the aforesaid advance amount of Rs.74,59,661/- which comes to Rs.13,14,739/- and added it in the income of the assessee on the ground that during the previous year relevant to the assessment year in question the assessee company has taken loan on interest from various sources on which total interest of Rs. 12,81,33,000/- was debited in the profit and loss account. Accordingly, he has disallowed the interest to the tune of Rs.13,42,739/-. The CIT(A) affirmed the order of the assessing officer. The ITAT dealt with this issue in paragraph 52 to 54 of the impugned order. The ITAT has not disbelieved the contention of the assessee based on figures disclosed in the balance sheet that the assessee had its own fund over Rs.158 crores; whereas the investment made in M/s. Polypropylene India Ltd. (the joint venture company) was only Rs.74.60 lakhs. However, the Tribunal rejected the

contention of the appellant assessee on the ground that if the assessee had sufficient funds of its own available at the time of making the advance to M/s. Polypropylene India Ltd., possibly the company was not required to take loan from various organisations and pay interest on that.

53. We find that the finding recorded by the Tribunal is completely erroneous inasmuch as on one hand the Tribunal has accepted that the assessee was having its own funds over Rs.158 crores and yet affirmed the disallowance Rs.13,42,739/- on the presumption that if own funds were available, then possibly the assessee company was not required to take loan from various organisations. In our view, the finding recorded by the Tribunal is not based on any material. Taking of loan by the assessee is based on its own business requirement. The fact remains undisputed that a sum of over Rs.158 crores was available in its own hands which was a running capital. Therefore, the contention of the assessee that it advanced Rs.74,59,661/- to M/s. Polypropylene India Ltd. from its own fun/capital, cannot be rejected. Under the circumstances, disallowance of Rs.13,42,739/- out of interest is not based on any evidence, instead it is based totally on surmise and presumption. That apart, we have held the aforesaid unrecovered advance is the capital loss of the assessee. Under the circumstances, the substantial question of law no. (g) is answered in favour of the assessee and against the revenue. To this extent, the appeal of the assessee/appellant deserves to be allowed.

54. For all the reasons afore-stated, the substantial question of law nos.

(a) and (c) are not answered as those have not been pressed before us, the substantial question of law nos. (b), (d), (e) and (g) are answered in favour of the assessee and against the revenue and to that extent the impugned order of the Income Tax Appellate Tribunal is hereby set aside. The substantial question of law no. (f) is answered in favour of the revenue and against the assessee and to that extent the impugned order of the Tribunal is upheld.

55. Thus, the appeal (ITA/187/2004) is partly allowed to the extent indicated above.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

GH/S.Kumar/S.Das/As/S.Bag/SK

A.F.R.