



\$~104

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

+ **ITA 177/2024**

KRISHAK BHARTI COOPERATIVE LTD Appellant

Through: Ms. Surekha Raman and Ms.
Chinnimaya S. Advs.

versus

ASST. COMMISSIONER OF INCOME TAX..... Respondent

Through: Mr. Abhishek Maratha, Sr.
Standing Counsel along with
Ms. Nupur Sharma and Mr.
Parth Semwal, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR

KAURAV

ORDER

%

13.03.2024

CM APPLS. 15213/2024 & 15214/2024 (Exemptions)

Allowed, subject to all just exceptions.

The applications stand disposed of.

ITA 177/2024

1. The assessee impugns the final order dated 30 October 2023 passed by the Income Tax Appellate Tribunal ['ITAT'] and has proposed the following questions of law:-

“a. Whether the Tribunal is justified in rejecting the claim of the Assessee for allowing amortized portion of lease premium paid upfront to Noida Authority and U.P. State Industrial Development Corporation Ltd. (UPSIDC) for Shahjahanpur for use of the land, on the ground that such payment amounts to a Capital expenditure rather than Revenue expenditure?



- b. Whether the payment of lease premium in lump sum changes the nature of expenditure from that of a Revenue Expenditure to Capital Expenditure either while calculating deduction or otherwise?
- c. Has not the Tribunal failed to appreciate the true meaning and effect in law of the terms of the lease deed between the Appellant and Authority granting lease namely Noida and Shahjahanpur (UPSIDC)?
- d. Whether the Tribunal was justified in holding that the lease amount paid would amount to a Capital Expenditure rather than a Revenue Expenditure especially when neither ownership nor any rights of an ownership was created by payment of the premium in lump sum?
- e. Whether the Tribunal has erred in not appreciating that there is no addition to the capital structure but lease premium paid in lump sum enables Appellant to carry on its business paying nominal rent and hence lease premium paid is revenue expenditure?
- f. Whether the Tribunal has failed to appreciate that lease premium written off every year is for the exhausted period of the lump sum premium paid for use of land for business purposes and hence Revenue Expenditure?
- g. Did not the Tribunal err in law in not following the judgment of the High Court in Madars Industrial Investment Corporation Ltd vs. CIT reported in **225 ITR 802**, CIT vs. Gemini Arts P. Ltd reported in **254 ITR 201**. And JCIT vs. Sun Pharmaceuticals Ind. Ltd reported in **227 CTR (Guj) 206** while disallowing the amortization of lease premium?
- h. Whether the Tribunal erred in not following the principle of consistency from year to year laid down in the case of *Radhasaomi Satsang vs. CIT*(193ITR 321@329) while disallowing the amortization of lease premium.”

2. However, we find that identical issues formed subject matter of ITA 154/2023 which has come to be dismissed by an order dated 15 March 2023 and which reads thus:-

- “3. This appeal concerns Assessment Year (AY) 2016-17.
4. The challenge in the appeal is directed to the order dated 15.11.2022 passed by the Income Tax Appellate Tribunal [in short, “Tribunal”].
5. The issue which arises for consideration is: whether lump sum payment made towards lease premium should be treated as capital expenditure?
6. Ms Surekha Raman, learned counsel for the appellant/assessee,



has fairly placed before us, an order of the coordinate bench of this Court dated 29.07.2022 passed in ITA No.236/2022.

6.1 The coordinate bench, following the decision dated 12.07.2012 rendered by another coordinate bench in ITA No. 205/2010, titled: **Krishak Bharti Cooperative Vs. Deputy Commissioner of Income Tax** has dismissed the appeal of the appellant/ assessee.

7. We have been informed by Ms Surekha Raman, that a Special Leave Petition (SLP) [i.e., SLP(C) No.35813/2012] has been preferred *vis-a-vis* the decision rendered by the coordinate bench of this Court in ITA No.205/2010, which is pending consideration.

8. Accordingly, the instant appeal is closed, with a caveat, that if the Supreme Court was to reach a different conclusion, parties will abide by the decision so rendered.”

3. Following the view so taken, we find no ground to entertain the instant appeal. It shall meet a similar fate.
4. The appeal shall consequently stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 13, 2024

RW