



HIGH COURT OF DELHI AT NEW DELHI

I.T.R. No. 239 OF 1982

Date of decision: March 13, 2001

COMMISSIONER OF INCOME-TAXPETITIONER
 through Mr.R.C.Pandey
 with Ms.Premalata Bansal,
 Advocates.

- VERSUS -

M/S. GOWAR SONS PUBLICATION.....RESPONDENT
 (PVT.) LIMITED.....
 through Nemo.

Coram :

THE HON'BLE MR JUSTICE ARIJIT PASAYAT, C. J.
 THE HON'BLE MR JUSTICE D. K. JAIN.

- i) Whether Reporters of local papers may be allowed to see the judgment ?
- ii) To be referred to the reporter or not ?

ARIJIT PASAYAT, C. J. (ORAL)

At the instance of Revenue, following question has been referred for opinion of this Court under Section 256(1) of the Income-tax Act, 1961 (in short 'Act') by the Income-tax Appellate Tribunal Delhi Bench-D, Delhi (in short 'Tribunal'):-

"Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was right in holding that an amount of Rs.48,161/- in respect of interest payable/paid was an allowable deduction?"

The dispute relates to the assessment year

1975-76.



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2. Background facts, so far as relevant, in a nutshell are as follows:

Assessee company carried on business as printers and publishers. Until 30th September 1972, business was being carried on by partnership firm styled M/s. Goverdhan Kapoor and Sons. As per agreement dated 1st October 1972, the business was taken over as a running concern by the assessee company for a consideration of Rs.8,31,133/-. As per paragraph (2) of the agreement, assessee agreed to take over all the assets of the transferor firm, as per the balance-sheet dated 30th September 1972. The aforesaid firm, as per agreement dated 30th April, 1971, had purchased from Indo-European Machinery Co. (P) Ltd. (hereinafter referred to as suppliers) an off-set printing machine costing Rs.3,82,400/- and a thread book sewing machine costing Rs.55,000/-. In the agreement there was a clause, which stipulated liability for paying interest on delayed payment. But the purchaser firm made an endorsement on the order form, against the column relating to payment, as follows:

"interest @ 12% may be charged in case of delay in payment of instalment".
(underlined for emphasis).

Four debit notes were received by the assessee from the suppliers during assessment year.



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corresponding to previous year ending on 30th September 1974. In terms of those four debit notes, assessee was required to pay a sum of Rs.62,540/-. On the basis of the said debit notes, relateable to the agreement dated 30th April 1971, payment having been made, assessee claimed same as a revenue deduction. It is to be noted that one of the debit notes for an amount of Rs.1859/- was received in October 1974. Income-tax Officer allowed deduction to the extent of Rs.12,520/- holding that only the same was allowable as the balance related to previous periods. Matter was carried in appeal before the Appellate Assistant Commissioner (in short AAC). Said authority held that the liability arose from time to time when there was a default in payment of the agreed amount and not on receipt of debit notes during the assessment year in question. Assessee preferred appeal before the Tribunal. Its stand was that the interest liability in question was a revenue liability and the same accrued when the debit notes were received. There was a difference of opinion between Judicial Member and the Accountant Member on that issue. The former held that the agreement was complete in its terms and the liability of the firm purchasing the machines to pay interest arose, without anything more, merely on commission of default in the



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stipulated payment of instalments or other amounts. Assessee company was not a party to the agreement with the suppliers and even otherwise the liability was of capital nature. The Accountant Member, however, held that the assessee was entitled to deduction of Rs.48,161/- (Rs.50,020/- minus Rs.1,859/-). In view of this difference the matter was referred to the third Member by the President. The Vice President before whom the matter was placed held that the conclusions of the Accountant Member were in order. Accordingly, the sum was directed to be allowed as a deduction. On being moved for reference, the question as set out above, has been referred.

3. We have heard learned counsel for the Revenue. There is no appearance on behalf of the assessee inspite of notice.

Learned counsel for the Revenue submitted that merely because the debit notes were received during the assessment year same did not make any difference because the liability arose as and when the default was committed. There was no option left with suppliers, so far as charging of interest is concerned, and therefore the view of the Judicial Member ought to have been accepted.

4. Tribunal noted few relevant aspects. Firstly, it took note of the system of crediting



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interest as done by the assessee. It was recorded as a finding of fact that assessee has been following the system of crediting interest of the suppliers and debiting its profit and loss account only on receipt of debit notes. Secondly, charging of interest was not absolute as was made out by the Revenue authorities and the Judicial Member. As the endorsement made by the purchaser on the order form itself shows, in case of delay the suppliers had the discretion to charge interest @ 12%. On a reading of the endorsement made by the purchaser, it was construed by the Accounted Member and the Vice President that the same amounted to confirmation of a discretion and an option with the suppliers to charge or not to charge interest. That being the position, there was no accepted liability to pay such interest and the assessee was not required to provide for such contingencies, in its accounts.

Above being the position, Tribunal's conclusions cannot be said to be perverse or unreasonable. Merely because a different view may be available to be taken on the factual position that would not give rise to a question of law. Our answer to the question, therefore, is in the affirmative, in favour of the assessee and against the Revenue.

Reference is accordingly disposed of.




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Reference is accordingly disposed of.


(CHIEF JUSTICE)


(D. K. JAIN)
JUDGE

MARCH 13, 2001
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