



IN THE HIGH COURT OF DELHI

ITR No.280/82

Date of Decision:21.3.2001

M/s Freeze King Industries ..... Petitioner  
Private Limited

Through: None.

VERSUS

The Commissioner of Income-tax ..... Respondent  
Delhi

Through:Mr. R.D.Jolly with Mr.  
Ajay Jha, Advocates.

CORAM:

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

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?

Arijit Pasayat, C.J.(Oral)

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

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the sum of Rs.5,115/- paid as interest along with instalment in respect of plot No.182/14, Industrial Area, Chandigarh was of a capital nature and was not allowable as revenue expenditure?"

2. Dispute relates to Assessment Year 1976-77. The background facts essentially are as follows. Assessee is a Private Limited Company which was



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incorporated on 24th June, 1966 and carried on the business of manufacture and sale of air-conditioning and refrigeration machinery. Previous year for the assessment year in question ended on 30.6.1975. On an application made by the assessee, Estate Officer, Chandigarh Administration, by order dated 11.9.1972 allotted a plot in Industrial Area, Chandigarh for a consideration of Rs.1,18,037/-. Assessee was required to pay 25% of the premium immediately. Assessee paid the required amount and possession was given on 20.10.1972. By a letter dated 17.8.1973 Chandigarh Administration required the assessee to pay first instalment of Rs.24,336.25p which comprised of principal of Rs.16,180.84, interest of Rs.5,472.66p and ground rent of Rs.2,682.75p. Thereafter 2nd, 3rd, 4th and 5th instalments were required to be paid on 11th September of the years 1974 to 1977. Along with the instalment, assessee paid interest of Rs.5,115/- for the assessment year in question and claimed it as a revenue expenditure. Income-tax Officer(in short the 'ITO') disallowed it, holding it to be of capital nature. Matter was carried in appeal before the Commissioner of Income-tax(Appeals)(in short the 'CIT(A)'). Said authority affirmed Assessing Officer's conclusion. Assessee carried the matter in appeal before the Tribunal. Assessee's stand was that the amount in

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question constituted revenue expenditure. Tribunal did not accept the plea. It was held that assessee had paid only certain instalments and the land in respect of which the instalments had been paid was yet to be used for the purpose of business. No construction of the factory had also taken place. Therefore, the payment was held to be of capital nature. On being moved for reference, question as set out above has been referred for opinion.

3. We have heard learned counsel for the Revenue. There is no appearance on behalf of assessee in spite of notice. Learned counsel for the Revenue pointed out that as has been analysed by the Tribunal, the expenditure made is clearly of capital nature.

4. At this juncture it would be necessary to take note of Section 43(1) of the Act, Explanation 8. The provision reads as follows:

"43. In sections 28 to 41 and in this section, unless the context otherwise requires-

(1) "actual cost" means the actual cost of the assets to the assessee, reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority:

Provided that where the actual cost of an asset, being a motor car which is acquired by the assessee after the 31st day of March, 1967, but before the 1st day of March, 1975 and is used otherwise than in a business of running it on hire for tourists, exceeds twenty-five thousand rupees, the excess of  
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the actual cost over such amount shall be ignored, and the actual cost thereof shall be taken to be twenty-five thousand rupees.

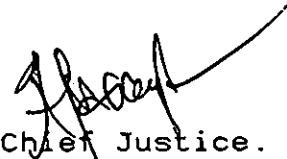
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Explanation 8 :- For the removal of doubts, it is hereby declared that where any amount is paid or is payable as interest in connection with the acquisition of an asset, so much of such amount as is relatable to any period after such asset is first put to use shall not be included, and shall be deemed never to have been included, in the actual cost of such asset."

It is to be noted that the Explanation in question was inserted by Finance Act, 1986 with retrospective effect from 1.4.1974. This provision no doubt was not before the Tribunal when it dealt with the question. Therefore, it would be proper if the Tribunal considers the effect of this insertion and decides the claim of assessee. The matter is accordingly remanded back to the Tribunal for fresh adjudication. While deciding the matter afresh, the principles laid down by the Apex Court in Challapalli Sugars Ltd. v. C.I.T., (1975) 98 ITR 167 shall be kept in view by the Tribunal.

The reference stands disposed of.



Chief Justice.



D.K.Jain, J.

21st March, 2001  
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