



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

ITA.No.588/2004, ITA.No.4/2002 & ITA.No.99/2002

**Judgment delivered on: 01.10.2004**

**M/S DCM LTD**

**...Appellant**

**- versus -**

**THE COMMISSIONER OF INCOME-TAX**

**...Respondent**

**Advocates who appeared in this case:**

For Appellant : Mr S.K.Aggarwal with Mr Vinay Valsh

For Respondents : Mr R.D. Jolly with Mr S.C. Sharma for the respondent  
in ITA.No. 588/2004 & ITA.No.4/2002.

Mr R.D. Jolly with Mr Ajay Jha for the respondent  
in ITA.No. 99/2002.

**CORAM:-**

**HON'BLE MR JUSTICE B.C. PATEL, CHIEF JUSTICE**  
**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

**B.C. PATEL, CJ (ORAL)**

**ITA.No.588/2004**

Admit.

On the identical issue, the appeals are pending before us for previous years. The following question of law is required to be determined by this court:

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal



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was right in law in holding that the sum of Rs.10,69,542/- credited to Molasses Storage Fund out of the sale proceeds of molasses was to be included in the income of the appellant?"

In the other two appeals, the question is identical except the amount.

**ITA.No.588/2004, ITA.No.4/2002 & ITA.No.99/2002**

1. At the request of the learned counsel appearing for the assessee as well as the revenue, we are disposing of all the three appeals, namely, ITA. 4/2002, 99/2002 and the present appeal being ITA.No. 588/2004 for the assessment years 1984-85, 1985-86 and 1986-87 respectively.

2. The Assessee is a public limited company engaged in the manufacture of various articles including sugar. Under the provisions contained in the Molasses Control (Regulation of Fund for Erection of Storage Facilities) Order, 1976 which is required to be read with Molasses Control Order, 1961 issued in exercise of powers under Section 18-G of the Industries (Development and Regulation) Act, 1951, the Assessee was required to maintain a Molasses Storage Fund and was required to maintain accounts as indicated under clause 3 of the order and was



obliged to utilise the amount as indicated in clause 4 of the order. The assessee had no control over the fund when it was deposited in the bank as the amount was required to be deposited in accordance with the order and for the purpose and the manner indicated therein.

3. We have heard the learned counsel at length and in the opinion of the court, the case is entirely covered by the decision of the Madras High Court in **CIT v Salem Co-operative Sugar Mills Ltd: 229 ITR 285** and, as contended by the learned counsel for the assessee by several other decisions of various High Courts which are referred to hereunder:

1. CIT v Pandavapura Sahakara Sakkare Karkhane Ltd., 198 ITR 690 (Kar.);
2. CIT v Ilirayakeshi Sahakari Sakkare Kharkhane, 200 ITR 130 (Kar.);
3. Somaiya Orgeno-Chemicals Ltd v CIT, 216 ITR 291 (Bom.);
4. CIT v New Horizon Sugar Mills (P) Ltd., 244 ITR 738 (Mad.);
5. CIT v Sakthi Sugars Ltd., 251 ITR 166 (Mad.);
6. CIT v Madurantakam Coop. Sugar Mills Ltd., 263 ITR 388 (Mad.);
7. CIT v Nizam Sugar Factory Ltd., 253 ITR 68 (AP)."



5. It is also indicated by the learned counsel that the SLP preferred by the revenue in the case of **CIT v Pandavapura Sahakara Sakkare Karkhane Ltd** and **CIT v Hirayakeshi Sahakari Sakkare Kharkhane** were dismissed. Civil appeal preferred against the decision rendered by the Madras High Court in **CIT v New Horizon Sugar Mills (P) Ltd** has been dismissed [269 ITR 397 (SC)].

6. The learned counsel has placed before us a copy of the order of the Supreme Court in Civil Appeal No. 2499/98 in the case of **CIT, Madurai v The Ambur Coop. Sugar Mills Ltd** and other matters decided on 28.08.2001. The Supreme Court made an order which is as under:

ORDER

**Delay condoned**

The civil appeals and special leave petition are not pressed by Mr. M.L. Verma, Learned Counsel for the Revenue for the reason that the special leave petition against the judgement followed by the High Court in the order under appeal was dismissed as also special leave petitions against judgement of various High Courts taking a similar view.

The civil appeal and special leave petition are dismissed.

No order as to costs."



7. We would like to quote the relevant portion from the case of **CIT v Salem Co-operative Sugar Mills Ltd (Mad.)** (supra) as the issue has been elaborately dealt in that case. The relevant portion of which reads as under:

"But according to the facts arising in the present case, the assessee was directed to collect a certain amount along with the price fixed for alcohol under the Molasses Control (Amendment) Order. Therefore, even before collection of the amount as directed by the Central Government under the Molasses Control (Amendment) Order, the assessee was directed to keep this amount under a separate account under the head "Molasses storage fund". Though the assessee collects this amount under the statutory obligation, it does not belong to the assessee, but it belongs to the molasses storage fund. The assessee cannot utilise the amount in the said fund for any other purpose. The fund has got to be utilised for the purpose of constructing a storage tank as per the specifications given by the Central Government. If the assessee failed to collect such amount as directed by the Molasses Control (Amendment) Order, the Central Government will construct a molasses storage tank and recoup the construction charges from the assessee. Therefore, there is diversion of title even at the source of the income collected as per the directions given under the Molasses Control (Amendment) Order. But according to the facts arising in the decision of the Supreme Court cited supra, the amount will be standing to the credit of the contingency reserve. The reserve is only for the utilisation by the assessee at a later stage when such contingency arises. Therefore, the assessee is having control and domain over the contingency reserve created according to the statute. After the amount was realised, the assessee was asked to create a contingency



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reserve, as against the facts arising in the present case where the assessee was directed to collect separately the amount for molasses storage fund, over which the assessee has no control or domain. Further, since it is not a provision for known or existing liabilities, the amount appropriated to the contingency reserve is not deductible as business expenditure according to the Supreme Court. For the foregoing reasons, we are of the opinion that the judgment of the Supreme court rendered in *Associated Power Co. Ltd. v. CIT [1996] 218 ITR 195*, will not be applicable to the facts arising in this case.

According to learned standing counsel, the Bombay High Court was not correct in stating in *Somalya Orgeno-Chemicals Ltd. v. CIT [1995] 216 ITR 291*, that the question of ownership of the fund is not relevant. What the Bombay High Court said was that inasmuch as the assessee was not having any right over the amount in the molasses storage fund and the assessee has lost all the domain over such amount, it was held that the amount collected by way of molasses storage fund had gone out of the hands of the assessee, which is not available for its utilisation, unlike the contingencies reserve occurring in the decision of the Supreme Court in *Associated Power Co. Ltd v. CIT [1996] 218 ITR 195*. In the present case also, after the amounts were collected as per the directions given by the Molasses Control (Amendment) Order, it goes to the molasses storage fund over which the assessee has no control and domain. Inasmuch as the assessee cannot utilise the same for its own business purpose, we have also here to hold that there is diversion by overriding title at the source itself. Even before the amount reached the hands of the assessee, the assessee was directed to transfer the same towards the molasses storage fund. Therefore, the collection made by the assessee belongs to the molasses storage fund."



8. In view of what is stated hereinabove, the answer is required to be given in favour of the assessee in all these appeals and against the Revenue.

*Belal*  
CHIEF JUSTICE

*Badar Durrez Ahmed*  
BADAR DURREZ AHMED, J

October 01, 2004  
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\*\*ITA.No.188/2004, ITA.No.4/2002 & ITA.No.99/2002 -srw\*\*//final//