



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

+ **ITA No.850/2005**

J

Date of Decision: 1st December, 2005

COMMISSIONER OF INCOME TAX. Appellant
 ! **Through: Ms.P.L. Bansal with**
Mr.Vishnu Sharma, Advs.

versus

\$ **M/S. TIIRANI CHEMICALS LTD. Respondent**
 ^ **Through : Nonc.**

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CORAM:
HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE B.N. CHATURVEDI

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 the Digest?

Per Thakur, J. (Oral) :

The assessee-company, in order to modernize and expand its activities and with a view to augment its long-term capital requirements, raised funds to the extent of Rs.406.65 lacs during the relevant accounting year by issue of



debentures on right basis to the existing shareholders. The expenditure incurred by the assessee in this regard aggregated to Rs.22,09,889/-. The assessee claimed deduction of the said amount from its taxable income. The Assessing Officer, however, came to the conclusion that the expenditure would qualify only for amortization under Section 35D of the Act. He further held that the decision of the Supreme Court in India Cements Ltd. Vs. Commissioner of Income Tax (60 ITR 52) stood nullified by the introduction of Section 35D. In appeal, the CIT (Appeals) affirmed the view taken by the Assessing Officer and held that the expenditure could not be allowed as a revenue expenditure because of the introduction of Section 35D w.e.f. 1.4.1971. In a further appeal before it, the Tribunal reversed that view. The Tribunal held that the Central Board of Direct Taxes had in circular No.56 dated 19th March 1971 observed that the provisions of amortization were not intended to supersede any other provision in the Income Tax law under which the expenditure is allowable as deduction against profits. The circular went on to state that expenditure incurred on the issue of debentures was admissible as deduction by virtue of the decision of the Supreme Court in India Cement's case and that Section 35 D did not have the effect of bringing that expenditure within the scope of the expenditure to be amortized against profits over a period of ten years. The Tribunal also held that the circulars issued by the Court were binding on the income tax authorities, in view of the decision of the



Supreme Court in Commissioner of Customs Vs. Indian Oil Corporation (187 CTR 297). It accordingly allowed the deduction of the expenditure on the issue of debentures. The present appeal filed by the Revenue assails the correctness of the said order.

We have heard Ms.Bansal, counsel for the revenue and perused the record. That the circulars issued by the Board of Direct Taxes are binding upon the revenue authorities except where the circulars take a view contrary to the decision of the Supreme Court is fairly well-settled by the decisions of the Apex Court including that in Indian Oil Corporation's case (supra). Ms.Bansal was, therefore, candid enough to concede that the circulars issued by the Board could not be departed from by the authorities. What she argued was that the circular notwithstanding, Section 35D covered cases of expenditure incurred on expansion of the existing business like the respondent's business in the present case and would, therefore, exclude any other provision which may have permitted deduction of expenditure that requires to be amortized under Section 35D. There is, in our view, no merit in that contention. The circular in question *inter alia* says that expenditure incurred on the issue of debentures is an admissible deduction in the light of the decision of the Supreme Court in India Cement's case (supra). It is true that India Cement's case did not directly deal with expenditure incurred on the issue of debentures. That was a case where the assessee had borrowed a loan and the question was whether



expenditure incurred on any such loan transaction was an admissible expenditure. The circular all the same extends the the logic underlying the said decisions to cases where the expenditure is incurred by the assessee by issue of debentures as is the position in the instant case. If that be so, it is difficult to see how the Revenue can still argue that since the case in hand refers to issue of debentures for expansion of an existing business, the expenditure incurred on the same must be amortized. Since the circular instructions are binding the Revenue would not be entitled to urge any such contention. To set the controversy at rest, the circular specifically states that expenditure incurred on the issue of debentures will be a permissible deduction notwithstanding the introduction of Section 35D. There is, after those instructions, no room for any further debate on the issue. The Tribunal was, in that view, perfectly justified in holding that the expenditure was a permissible deduction and accordingly deleting the additions made by the Assessing Officer. This appeal does not raise any substantial question of law for our consideration. It accordingly fails and is hereby dismissed.


T.S. THAKUR, J


B.N. CHATURVEDI, J

DECEMBER 01, 2005

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