



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

+ ITA 902/2006

**COMMISSIONER OF INCOME TAX DEL .... Appellant  
Through Mr.R.D Jolly, Advocate.**

versus

**MISSION VIEJO AGRO P.LTD. .... Respondent  
Through Dr.Rakesh Gupta with  
Mr. Jitender Saini, Advocates.**

**CORAM:**

**HON'BLE MR. JUSTICE VIKRAMAJIT SEN  
HON'BLE DR. JUSTICE S. MURALIDHAR**

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? ✓

**ORDER**

**24.11.2006**

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1. This appeal under Section 260A of the Income Tax Act, 1961 ('Act') is directed against the order dated 21.9.2005 passed by the Income Tax Appellate Tribunal ('ITAT'), New Delhi in ITA No. 2926/2001 pertaining to Assessment Year 1997-98.

2. After hearing learned counsel for the parties, we



admit the appeal and frame the following substantial question of law for the consideration of this Court:

"Has the assessee discharged its burden of showing, for the purposes of claiming deduction on account of interest under Section 36(1)(iii), that the funds borrowed by it were utilized for the purpose of business and not given as interest free advances for non-business purposes and does not the matter require to be remanded to the Assessing Officer (AO) for examining the agreements on record in order to determine whether there is a nexus between the funds borrowed and the interest free advances given by the assessee?"

3. The facts in brief are that the Respondent assessee, which was incorporated on 31.7.1991 has for its main objects the cultivation and dealing with agricultural produce, vegetable produce and other vegetable products and "setting up farms, agricultural houses, orchards, gardens business of horticulture etc." During the course of the assessment proceedings for the Assessment Year (AY) 1997-98, the AO noticed that the assessee had received an amount of Rs.4.25 Crores from M/s. Delhi Brass and Metal Works Limited on 11.10.1996 of which a sum of Rs. 3 Crores was refunded by it on 21.1.1997. The assessee had also received a sum of Rs. 2.5 Crores from the same company on 27.3.1997. It was claimed that the assessee



had paid liquidated damages to Delhi Brass & Metal Works Limited in the sum of Rs.29 lakhs. This was disallowed by the AO on the ground that as per the agreement that the assessee had with said M/s. Delhi Brass & Metal Works Limited, liability for liquidated damages could not be said to arise at the commencement of the agreement since the profitability could be worked out only at the final stage of the agreement.

4. The AO further noticed that the assessee had advanced, on 15.10.1996, sums of Rs.1.10 Crores and Rs.1.11 Crores respectively to M/s.Krishna Estate Private Limited and M/s. Prem Apartment Private Limited. It had also, towards the end of the previous year, advanced Rs.11,42,500/- each to M/s. Esteem Apartment, Happy Days Properties Limited and Hind Land Private Limited respectively. The total outstanding amount from these parties as on 31.3.1997 was Rs. 3,88,43,500/-. While the assessee did not receive any interest or liquidated damages from any of these parties, it received Rs.5 lakhs from Krishna Estate Private Limited. The assessee claimed that it had paid interest of Rs.25,79,692/- to Delhi Brass & Metal



Works Limited on the sum borrowed by the assessee. After allowing a deduction of Rs. 5 lakhs, which was received as liquidated damages, the AO disallowed the interest paid to the extent of Rs.20,79,692/-. After adding the disallowed liquidated damages, the carried forward loss of the assessee was re-computed at Rs.58,698/- instead of Rs.50,38,390/- as claimed by it.

5. Allowing the assessee's appeal, the Commissioner of Income Tax (CIT) (Appeals) held as follows:

"The fact that the advances given and received by the appellant company are project financing arrangements, without any fixed rate of interest has not been denied by the A.O. The A.O. has not established any nexus between the advances taken and given. Admittedly the appellant company is engaged in project development activities in its business and in the course thereof has received and given the project finance from and to various companies. In these circumstances it cannot be stated that the appellant company utilized the interest bearing funds for giving interest free advances. As such, the disallowance of Rs.20,79,692/- is not sustainable and accordingly it is deleted."



6. The matter was carried further in appeal to the ITAT, by the Revenue. The ITAT, in a cryptic order, held as follows:

"We have heard the parties, perused the records and have gone through the orders of the tax authorities below. We find that there is no reason to interfere with the impugned order in as much as the A.O. has not established the nexus between the interest free advances and the borrowed fund. We, therefore, uphold the order passed by the CIT(A)."

7. Mr. R.D.Jolly, learned counsel for the Appellant submits that the impugned Order of the Tribunal, affirming the Order of the CIT(A), deleting the disallowance of Rs.20,79,692/- on account of the interest paid by the assessee was not sustainable in law particularly since in terms of Section 36 (1)(iii) of the Act the onus of showing that the funds borrowed was for the purposes of its business had to be discharged by the assessee itself. He submits that assessee had failed to discharge this onus. The only inference that could be drawn was that the assessee had utilized the funds borrowed for giving interest free advances and and therefore, the CIT(A) and the ITAT



were not justified in deleting the disallowance as ordered by the AO.

8. Dr. Rakesh Gupta, learned counsel for the assessee was unable to categorically state if in fact the evidence forming part of the assessment record showed that the funds borrowed were for the purposes of the assessee's business and that there was no nexus between the advances made by the assessee and the funds borrowed by it. He sought to tender copies of certain agreements referred to in the order of the AO to show that even though the loans advanced by the assessee to third parties as part of the project finance arrangement were interest free, that would not necessarily imply any nexus between the moneys borrowed by it for business purposes and the advances given by it.

9. We find that none of the Authorities below has in fact discussed the clauses of the agreements referred to and forming part of the record in order to ascertain whether any nexus exists between the funds borrowed and loans/advances given by the assessee company. It is



undeniable that the onus is on the assessee, if it wants to claim deduction under Section 36 (1)(iii) of the Act on account of interest expenditure, to show that the funds borrowed were for business purposes and not utilized for making advances for non-business purposes. Since the assessee is relying on certain agreements, those will have to be examined in order to determine whether the onus on the assessee stands discharged. We do not think it proper for us to examine the agreements ourselves. Instead, the appropriate course would be to remand the matter to the AO to examine the matter afresh in light of the agreements that constitute a part of the assessment record.

10. We accordingly set aside the orders of the CIT (Appeals) and the ITAT and remand the matter to the AO [i.e. the Income Tax Officer, Co. Ward 2(2), New Delhi or any other Officer who may now be seized of the assessment concerning the assessee herein] for a fresh determination in the manner indicated hereinabove.

11. The appeal is accordingly allowed with the above



directions and with no order as to costs.

  
VIKRAMAJIT SEN, J

  
S. MURALIDHAR, J

November 24, 2006  
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