2007:DHC:10184-DB

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: August 30,2007

\+ ITA No. 26/2007

\# COMMISSIONER OF INCOME TAX .....Appellant
! Through : Ms. P.L. Bansal, Advocate

versus

$ HONDA SIEL POWER PRODUCTS LIMITED ..... Respondent
^ Through Mr. Ajay Vohra with Ms. Kavita Jha, Advocates

CORAM:
HON'BLE MR. JUSTICE MADAN B.LOKUR
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? ✓

JUDGEMENT

Dr. S.MURALIDHAR, J. (ORAL)

1. This appeal under Section 260-A of the Income Tax Act, 1961 ('Act') is directed against the decision dated 16th June, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench "C' Delhi ('Tribunal') in ITA No. 3539/Del/1999 for the Assessment Year 1992-93.

2. **Admit.**

3. The following substantial questions of law arise for consideration:

> (a) Whether the Income Tax Appellate Tribunal was correct in law in holding that the payment of Rs.23,21,865/- made by the Assessee as an advance to the suppliers for manufacturing tools and dies was a revenue expenditure?

negativing the contention of the Revenue that this was contingent liability?

4. Printing of paper books is dispensed with. With the consent of learned counsel for the parties, the appeal is finally heard.

5. The facts relevant to question (a) are that the Assessee company manufactures portable generator sets in technical collaboration with Honda Motor Company of Japan. Prior to the assessment year, that is 1992-93, the Assessee was amortizing the advances made by it to the manufacturer of tools and dies on the basis of the actual quantity of the components used in the production of generator sets. The case of the Assessee is that the payment made as advance ('tooling advance') was non-recoverable and the ownership of the tools and dies remained with the manufacturer. The benefit to the Assessee was that it had an indigenous source of supply of tools and dies for the components of the generator sets. The advance was charged to Profit and Loss Account in the year of advance.

6. The Assessing Officer found that for the assessment year in question the Assessee had claimed the tooling advance as revenue expenditure but did not produce any evidence to show why it had departed from the past practice of amortization. He accordingly held that the changed method of claiming the amount paid as tooling advance as revenue expenditure was not a standard method and further that the Assessee had not showed that the change was bonafide. The Assessing Officer disallowed the deduction and directed that the amount of Rs.23,21,865/- would be added to the income of the Assessee. On this aspect, the Commissioner of Tax (Appeals) ['CIT(A)']

7. In the further appeal filed by the Assessee, the Tribunal followe(order passed by it in I.T. No. 2852(Del) of 1999 for the assessment year 1995-96 in which it was held that the tooling advance was for facilitating the trading operations of the Assessee and further that the tools and dies continued to remain the property of the manufacturer. The Tribunal held this to be revenue expenditure and allowed the Assessee's appeal. It directed the Assessing Officer to allow the claim of the Assessee as a deduction.

8. Appearing for the Revenue, Ms. Prem Lata Bansal, learned Senior Standing Counsel submits that the expenditures on tools and dies have always been treated as a capital expenditure. The nature and character of such expenditure cannot be changed merely because the tool and dies are not owned by the Assessee. She further contends that where the Assessee itself amortized the expenditure in the previous assessment year there was no justification for a change in the pattern which resulted in the expenditure being treated as a revenue expenditure.

9. Replying to the submissions, Mr. Ajay Vohra, learned counsel appearing for the Assessee, submitted that even in the earlier years the amount paid towards tooling advance was claimed as revenue expenditure on amortized basis. It was not as if the nature of the expenditure had changed as was sought to be made out by the Revenue. He relied upon the judgment of the Hon'ble Supreme Court in ***Empire Jute Co. Limited v. Commissioner of Income Tax*** **[1980] 124 ITR 1** as well as the recent judgment of this Court in ***Commissioner of Income Tax v. Saw Pipes Limited*** 268 CTR 476.

res integra. The test in this regard has been reiterated by the Ho Supreme Court in ***Bharat Earth Movers v. Commissioner of Income Tax*** **245 ITR 428** and ***Empire Jute Co. Limited v. Commissioner of Income Tax*** **[1980] 124 ITR 1.** The recent judgment of this Court in ***Commissioner of Income Tax v. Saw Pipes Limited*** follows these decisions. It appears from the above decisions is that in order to treat an item of expenditure as a capital expenditure it will have to be shown that the asset in question, for which the tooling advance has been paid, is actually in the ownership of the Assessee.

11. In ***Saw Pipes Limited*** this Court noticed that the service line in question had been laid in the Assessee's premises to enable it to carry out business more efficiently. It was held that the service line belonged to the Maharashtra State Electricity Board and the ownership of the service line was not with the Assessee. In those circumstances it was held that the money paid by the Assessee in that case for laying the service line was to be treated as a revenue expenditure. Likewise in ***Commissioner of Income Tax, Bombay City-IV v. Excel Industries Limited*** **[1980] 122 ITR 995** it was held that the service lines laid for the benefit of the Assessee, which although owned by the Gujarat Electricity Board, did not mean that the Assessee had acquired any capital asset. The amounts spent by the Assessee in that case on laying the service line was treated as a revenue expenditure and therefore, an allowable deduction.

12. The Tribunal has referred to the decision of the Hon'ble Supreme Court in ***Empire Jute Co. Limited*** to hold that even if the expenditure was incurred for obtaining an advantage or benefit of an enduring nature it

Hon'ble Supreme Court in ***Commissioner of Income Tax v. Madras Auto Service (P) Limited*** **[1998] 233 ITR 468** and of the Madras High Court in ***Commissioner of Income Tax v. T.V. Sundaram Iyenger & Sons (P) Limited*** **95 ITR 428.** This Court's decision in ***Hindustan Times Limited v. CIT*** **[1980] 122 ITR 977** is also on the same lines.

13. Reverting to the facts on hand, we find that learned counsel for the Assessee is right in his submission that at no point of time was such expenditure claimed as a capital expenditure by the Assessee. That being the position, there was no justification for the Assessing Officer to disallow the deduction of the tooling advance on the ground that the Assessee, though not owing the asset in question, was deriving an enduring benefit from it. The fact that the moulds and dies continue to be remain the property of the manufacturer is decisive in determining the nature of the expenditure. The tooling advance paid to the vendors is also non-refundable. Not only is there an assurance of continued supply of components but as a result of this arrangement there is a price advantage. Earlier these components were imported and now there would be an indigenised source of supply. In these circumstances, the finding of the Tribunal was that the enduring advantage obtained by the Assessee is only in the revenue field and not in the capital field cannot be faulted.

14. Question (a) herein is answered in the affirmative, in favour of the Assessee and against the revenue.

15. As regards question (b) the facts are that the Assessee has a holiday incentive scheme for which, in the assessment year 1992-93, it had made a

different types of holiday incentives. The Assessing Officer disallowed deduction on the ground that the Assessee had failed to disclose details of the holiday incentive scheme as well as the names of the parties who were entitled to the incentive. He also held that the basis of quantification of the incentive was not disclosed and that the Assessee had failed to show that the expenditure was a bonafide accrued business liability during the relevant previous year.

16. In the appeal filed by the Assessee, the CIT (A) concurred with the AO that the amount constituting the provision for the holiday incentive scheme was not a determined or ascertained liability but only a contingent liability. The CIT (A) noticed that as against the provision of Rs.41,30,000/- the actual expenditure incurred in the next assessment year was only Rs.16,67,929. Therefore, it was held that the expenditure, if at all could be considered only for the assessment year, i.e. 1993-94.

17. The Tribunal on the other hand examined holiday incentive scheme and found that there was an office memo dated 29th April, 1992 from the Marketing Department to the Accounts Department mentioning that the probable liability towards the scheme for the previous year 1991-92 would be in the range of Rs.41,30,000/-. The Tribunal accepted the explanation offered by the Assessee that holiday incentive scheme was in-built in the sales effected by the dealers and cannot be said to be contingent. It also found that the difference between the provision that is Rs.41,30,000/- and the actual liability of Rs.16,67,929/- incurred in the next assessment year, which worked out Rs.24,62,071, was offered for tax by the Assessee in the assessment year 1993-94. In that view of the matter, the Tribunal directed

was in fact assessed at a loss, there was no revenue loss and therefore grievance to the Revenue.

18. We are of the view that no ground has been made out by the Revenue for interfering with the impugned order of the Tribunal. It is not possible to hold, in the facts and circumstances of the case, that the provision made for the holiday incentive scheme was not capable of being ascertained with reasonable certainty and it was therefore a contingent liability. There is nothing to indicate that the Assessee was adopting this device for avoiding tax. The system of accounting adopted by the Assessee appears to be consistent. Following the decision in ***Commissioner of Income Tax v. Vinitec Corporation Private Limited*** **[2005] 278 ITR 337 (Delhi)**. We are of the view that the claim of the Assessee had to be allowed. In that view of the matter, we find no infirmity in the reasoning and the conclusion of the Tribunal. Question (b) is answered in the affirmative, in favour of the Assessee and against the revenue.

19. Accordingly, this appeal is dismissed with no order as to costs.

S. MURALIDHAR, J.

MADAN B.LOKUR, J.

August 30, 2007
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