* IN THE HIGH COURT OF DELHI : NEW DELHI

\+ **ITA No. 450/2008**

% Judgment reserved on : 03.09.2008
Judgment delivered on : 21.11.2008

COMMISSIONER OF INCOME TAX
DELHI-II ..... **Revenue**

versus

MONNET INDUSTRIES LTD ..... **Respondent**

Advocates who appeared in this case:

For the Revenue : Mr R.D. Jolly
For the Respondent : Mr Ajay Vohra & Ms Kavita Jha

CORAM :

Hon'ble Mr.Justice Badar Durrez Ahmed
Hon'ble Mr. Justice Rajiv Shakdher

1. Whether the Reporters of local papers may be allowed to see the judgment ? Yes

2. To be referred to Reporters or not ? Yes

3. Whether the judgment should be reported in the Digest ? Yes

Rajiv Shakdher, J.

1. This is an Appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') preferred against the judgment of the Income Tax Appellate Tribunal (hereinafter referred to as the

'Tribunal') passed in ITA No. 4040/Del/2002 in respect of the assessment year 1996-97.

2. The Revenue being aggrieved by the impugned judgment has preferred an appeal to this court. The ground taken in the appeal by the Revenue before the Tribunal was whether the Commissioner of Income Tax (Appeals) [hereinafter referred in short as the 'CIT(A)'] erred in allowing the claim of the assessee in the sum of Rs 5,66,79,270/- as revenue expenditure in connection with setting up of the sugar plant at Muzaffarnagar in the State of U.P.

2.1. In order to dispose of the appeal, the following facts require to be noted:-

2.2 In 1991, the respondent/assessee had set up a Ferro Alloys Manufacturing Plant, in Raipur, which was, engaged in both, the manufacture of Ferro Alloys, as also, trading of Ferro Alloys.

2.3. In the year 1994-95 and 1995-96, the respondent/assessee set up a sugar manufacturing plant at Muzaffarnagar in the State of U.P. The said sugar plant had an installed capacity of 2500 TCD. The respondent/assessee's trial run in respect of sugar plant commenced on 20.3.1996. The total project cost for setting up of the sugar plant was a sum of Rs 56.74 crores. This amount was raised, inter-alia, by way of term

loans, rights and public issue. The assessee has admittedly spent a sum of Rs 5,66,79,270/- as pre-operative expenses in respect of afore-mentioned sugar plant at Muzaffarnagar, U.P. The break-up of the said expenses as set out in the Assessment order is as follows:-

Details	Amount in Rupees
a) Material consumed in trial production	16,62,372
b) Power and fuel	28,99,256
c) Salary, wages and amenities	70,02,410
d) Admn. Expenses	1,11,34,625
e) Financial charges	3,50,83,472
Less closing stock of finished goods & w.i.p.	11,02,865
Total	Rs 5,66,79,270/-

2.4. As would be evident from the break-up given above, a sum of Rs 3,50,83,472/- was spent by the respondent/assessee towards financial charges i.e., as interest on monies borrowed for the purposes of setting up the sugar plant.

2.5. On 29.11.1996, the respondent/assessee filed its return of income tax for the assessment year 1996-97. In the return, the respondent/assessee disclosed a loss of Rs 7,23,18,949/- . In computing its income, the

respondent/assessee had claimed the afore-mentioned sum of Rs 5,66,79,270/- as revenue expenditure incurred in relation to a sugar plant, for the relevant financial year 1995-96.

2.6. The respondent/assessee's return was processed under Section 143(1)(a) of the Act.

2.7. On 7.11.1997, the Assessing Officer issued a notice under Section 143(2) of the Act. In the course of assessment proceedings, the Assessing Officer raised queries with respect to the expenditure in issue, on receiving replies to the queries raised and after hearing the authorised representatives of the respondent/assessee, the Assessing Officer vide order dated 29.3.1999 disallowed the expenditure in issue, primarily on the ground, that the, sugar plant constituted a new source of income as it was not the same business in which the assessee was engaged, which was manufacture of ferro alloy or trading of ferro alloy etc. The Assessing Officer was also of the view that the respondent/assessee had made a case of interlacing and unity of business in general terms and not with specificity as required by virtue of law laid down by the Courts in India. The Assessing Officer was thus, of the view that, the expenditure in issue related to a new project and hence, was not liable as a deduction since different lines of business carried out by the respondent/assessee did not constitute the same business.

2.8 It is also important to note at this juncture that the Assessing Officer also disallowed the alternative claim of depreciation raised by the respondent/assessee even though the expenditure in issue was held to be capital in nature; on the ground that trial production did not amount to commencement of commercial production.

3. Aggrieved by the same, the respondent/assessee filed the appeal with the CIT(A).

3.1 The CIT(A), after a detailed examination of the issue, both on facts and law, came to the conclusion that the expenditure in issue was in the nature of revenue expenditure since the sugar plant project was in the same business fold. The CIT(A) held as follows:-

> "…….In the light of these submissions and Delhi HC decision in 200 ITR 341 it is to be held that the sugar project was in the same business fold that of the business of manufacture as that of ferro chrome or the trading in it. Similarly it is to be held as per the submissions and case laws that it was a case of interlacing not in general terms but in specific terms……."

4. The Revenue, aggrieved by the order passed by the CIT(A), preferred an appeal before the Tribunal. The Tribunal examined the matter at great length. On examining the issue, it posed a question to itself, which was, whether the sugar plant of the assessee constituted the 'same business' as against a different or a distinct business of the assessee. In other words,

whether the new line of business, i.e., setting up of the sugar plant when the assessee was already in the field of manufacture and trading of ferro chrome, would constitute a business in the same business fold. It is important to note that the Tribunal flagged this issue to be one which was, essentially, a question of fact.

4.1 The Tribunal in the impugned judgment, while deliberating on the case set up by the assessee in the background of the question posed by it, examined whether there was interlacing and unity of business in specific terms as claimed by the assessee. Towards this end, the Tribunal examined the financial statements of the sugar plant, as well as the minutes of the Board of Directors' meetings of the respondent/assessee. The Tribunal noted the fact that both the ferro alloys plant and the sugar plant were controlled by the same Board of Directors who were stationed at the head office in Delhi. They noted the fact that the respondent/assessee had drawn up a common balance sheet which reflected the financial health of the entire business comprising of the ferro chrome and sugar divisions. It also noted the fact that the personnel engaged to look after the secretarial, financial and administrative work and the human resources department were common to both the divisions, even though, the divisions were located geographically at different places. In the impugned order, it was, however, noted that the marketing of the final product manufactured by the two divisions, were

supervised and controlled by the same set of executives who operated from the head office, at Delhi. In view of the above, the Tribunal came to the conclusion that the respondent/assessee had a common management to look after the affairs of both the divisions. It also noted the fact that, in their day to day working, both the divisions had access to a common pool of funds as also the fact that the business being one, it had a common share capital and a common set of shareholders. It specifically noted that the project cost of the sugar plant was funded by a rights cum public issue, loans and internal cash accruals of ferro chrome division, which were facts, not disputed by the Revenue. In these circumstances, the Tribunal concluded that the source of funds for both the divisions was common.

4.2 The Tribunal also applied the test of impact of closure of, one of the two lines of business, on the other to ascertain whether the two divisions were independent of each other. In applying this test, the Tribunal came to the conclusion that closure of any of the two plants would surely affect the working as also impact the remaining business, for the simple reason that a larger liability in respect of the entire business would have to be borne by the plant which remains functional. It thus concluded that the sugar plant was a mere extension of the existing business of ferro alloys. According to the Tribunal, the respondent/assessee was engaged in the same business as the decisive test is unity of control and not same line of business.

4.3 It is, however, important to note that while returning the aforesaid findings of fact, in respect of the respondent/assessee, the Tribunal allowed deduction of only that expenditure which was incurred towards financial charges, being a sum of Rs 3,50,83,472/- incurred for the purposes of setting up of sugar plant, as revenue expenditure under Section 36(1)(iii) of the Act. In respect of the balance amount in the sum of Rs 2,15,95,798/-, out of total expenditure amounting to Rs 5,66,79,270/-, the Tribunal restored the matter back to the Assessing officer to ascertain whether the expenditure was of capital or revenue nature.

5. The Revenue, being aggrieved by the impugned judgment, as mentioned above, has preferred the present appeal.

5.1 Having heard the learned counsel for the Revenue, as well as, the respondent/ assessee and upon perusal of the records of the authorities below, we are of the view that financial charges, i.e., interest on borrowed capital to the extent of Rs 3,50,83,472/-, as claimed by the assessee, ought to be allowed as deduction under Section 36(1)(iii) of the Act for the reasons given hereinafter. It is important to note, as mentioned hereinabove, that the balance sum of money amounting to Rs 2,15,95,798/- out of a sum of Rs 5,66,79,270/- is not raised as an issue before us in the present appeal

and hence, we need not express any view in respect of that part of the order of the Tribunal.

5.2 Section 36(1)(iii) of the Act permits an assessee to claim interest paid, as expenditure in respect of, borrowed capital in computing its income under Section 28 of the Act in the event the loan taken i.e, "capital borrowed" and the interest paid thereon is for the purposes of business. It is important to note that we are not concerned with the proviso in the present case which was inserted in Section 36(1)(iii) of the Act by the Finance Act, 2003 w.e.f. 01st April, 2004. The year under consideration in this appeal, is assessment year 1996-97.

5.3 In ascertaining whether interest on borrowed capital is paid for the purpose of businesses where an assessee has two lines of businesses, the following well settled tests have been evolved over the years by the Courts in India.

5.4 In ***Scales*** v. ***George Thompson & Co Ltd*** *(1927) 13 TC 83 (KB)*, Rowlatt, J. formulated the following test:-

> "I think the real question is was there any inter-connection any interlacing any inter-dependence any unity at all embracing those two businesses.'

5.5 In ascertaining whether there was unity of business and unity of control and management, the Supreme Court in the cases of ***Setabganj Sugar***

Mills Ltd v. ***Commissioner of Income Tax:*** *(1961) 41 ITR 272 (SC)* and ***L.M.Chhabda and Sons*** v. ***Commissioner of Income Tax, Gujarat:*** *(1967) 65 ITR 638*, laid down the tests that the following will have to be borne in mind, the inter-relation of the businesses, the employment of same capital, the maintenance of common books of account, employment of same staff to run the business, the nature of the different transactions, the possibility of one being closed without affecting the texture of other.

5.6 This test was further refined by the Supreme Court in the case of ***Commissioner of Income Tax*** v. ***Prithvi Insurance Co Ltd:*** *(1967) 63 ITR 632.* In this case, while holding that life insurance business and general insurance business were the "same business", it observed that in determining whether two or more lines of businesses may be regarded as "same business" **or "different business", what has to be looked at is, the nature of businesses, the nature of their organization, management, source of capital fund utilized, method of book keeping used and other related circumstances which stamp the businesses as the same or distinct.** The Supreme Court concluded that both life insurance and general insurance came within the fold of "same business". It took into account the fact that both businesses were attended by the Branch Managers and agents without any distinction and there was one common administrative organization, and the expenses incurred in connection with the business, both

for administration and for heads of expenditure such as salary of the staff, postage, staff welfare fund and general charges, were common.

5.7 The Supreme Court, however, in this case explained the exact scope of tests employed in the earlier cases in ascertaining whether two lines of businesses were the same, which was, that closure of one business would **affect the conduct of the other business – by holding that this test by itself was not a decisive test in determining whether or not two lines of the businesses constitute the same business. The Supreme Court held that the said test would stand fulfilled if one business cannot be conveniently carried on after the closure of the other, there would be a strong indication that the two businesses would constitute "the same business", but no decisive inference can be drawn if after the closure of one business the other may conveniently be carried on.**

5.8 In determining whether two lines of businesses constitute the same business and to this end, **whether nature of the two businesses has to be looked** at, was a proposition, the Supreme Court rejected in the case of a ***Produce Exchange Corporation Ltd*** v. ***CIT:*** *(1970) 77 ITR 739*. In this case, the assessee carried on business in diverse commodities as also in stocks and shares. The issue was whether the losses suffered by the assessee in the sale of shares of Public Limited Company could be set off against profits from

transactions in other commodities in the relevant year. In the said case the Supreme Court noted that the Calcutta High Court had followed the test laid down by it in ***Shree Ramesh Cotton Mills Ltd*** **v.** ***Commissioner of Income Tax:*** *(1967) 64 ITR 317*, wherein in determining whether the two lines of businesses constitute the same business, they had applied the yardstick, whether the nature of the two businesses was the same. The Supreme Court, however, reversed this view of the Calcutta High Court by holding as follows:-

> "We need not consider whether the ultimate decision of the High Court in Shree Ramesh Cotton Mills Ltd's case on which reliance was placed is correct, but we are unable **to agree with the High Court that the decisive test for determining whether the two lines of businesses constitute the same business is the nature of the two businesses**"

6. The aforesaid view taken by the Supreme Court was re-affirmed by it, in the case of ***B.R.Ltd*** **v.** ***V.P.Gupta, Commissioner of Income Tax, Bombay:*** *(1978) 113 ITR 647.* ***In B.R.Ltd*** *(supra)*, the Supreme Court was called upon to decide whether unabsorbed losses suffered in the business of import of woolen fabrics could be set off from the profits earned in respect of export of cotton textiles . The Supreme Court in the said case, approved the ratio of the judgments of its own court in the case ***Prithvi Insurance*** *(supra)*, and ***Produce Exchange*** *(supra).* In doing so it also noted the

observations made in the decision of the Supreme Court in the case of ***Standard Refinery and Distillery Ltd*** v. ***Commissioner of Income Tax:*** *(1971) 79 ITR 589* and finally concluded that, tests for ascertaining whether the two lines of businesses were the same business was not dependent on determination of the nature of goods dealt with. The decisive test according to the Supreme Court was the unity of control and not the nature of two lines of businesses. It further held that even though the fact that one business cannot be conveniently carried on after the closure of the other business may furnish a strong indication that the two businesses do not constitute the same business, but as already held in ***Prithvi Insurance*** *(supra)* no decisive inference can be drawn from the fact that after the closure of one business the other cannot be conveniently carried on.

6.1 Based on the aforesaid tests, let us examine the findings returned by Tribunal in coming to the conclusion that there is a unity of control and management, interlacing and dovetelling of finances. The Tribunal in the instant case found as a fact in paragraph 30-31 of the impugned judgment that there was a common Board of Directors controlling the ferro alloys plant, as well as, the sugar plant which, operated from the head office located at Delhi, funds for the two plants were common and hence, there was inter-mingling and interlacing of funds, as also the fact, that even though the two divisions were geographically located at different sites, marketing of the final

products was carried out under the supervision and control of the same set of executives at the head office. Applying the tests discussed hereinabove to facts as determined by the Tribunal, we have no difficulty in holding that the sugar plant and the ferro alloys plant were in the same fold of business.

6.2 This brings us to the other issue, which is, whether financial charges i.e, interest paid on borrowed capital for the 'purposes of business', in the instant case, is allowable as a deduction in the circumstances that the borrowed capital brought into existence a capital asset. To our mind the fact that the loan or capital borrowed has been used for purchase or in connection with bringing into existence a capital asset or not, has no impact in determining whether the interest paid on borrowed capital ought to be allowed under Section 36 (1)(iii) of the Act [see observation in ***India Cement Ltd*** v. ***Commissioner of Income Tax:*** *(1966) 60 ITR 52 at page 62-63]*. The determining factor is **whether interest paid on borrowed capital was used to set up a new business or was used to expand the existing business or, as in the instant, case to set up a new division within the same business fold.** In the case of ***Commissioner of Income Tax*** v. ***Alembic Glass Ltd:*** *103 ITR 715*, the Gujarat High Court dealt with the similar situation wherein the assessee company had an existing unit for manufacture of glass at Baroda since 1947. During the relevant assessment years 1965-66 and 1966-67, the assessee-company incurred expenditure for

establishing a new glass unit at Bangalore. The unit at Bangalore did not go into production during the aforesaid two assessment years in question and, therefore, during the course of assessment, the Income Tax Officer disallowed the payment of interest on borrowings in respect of the aforesaid two assessment years. The Income Tax Officer was also of the view that the Bangalore unit was not a branch of the assessee factory at Baroda and was, therefore, a new business and since, this new business had not started production, the payment of interest could not be taken as revenue expenditure. The Gujarat High Court was called upon to answer the following questions:-

> "(i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the Whitefield Factory at Bangalore did not constitute a separate undertaking but was only an establishment of a new unit of the existing factory at Baroda.
>
> (ii) Whether, on the facts and in the circumstances of the case, the interest, miscellaneous expenses, and travelling expenses incurred by the assessee referable to the Bangalore unit are wholly and exclusively for the purpose of the assessee's business?"

6.3 In respect of the first question, the Gujarat High Court held that whether the establishment of new unit at Bangalore can be treated as new or separate business of assessee did not present much difficulty in view of the test laid down by the Supreme Court as referred to hereinabove in the case of

Prithvi Insurance *(supra)* and ***Produce Exchange Corporation*** *(supra)*, as also, the test laid down by ***Rowlatt, J in Scales Vs. George Thompson & Co. Ltd*** *(supra)*. Applying the aforesaid test, the Gujarat High Court held that the new factory at Bangalore did not constitute a new business, but was only an establishment of a new unit of the existing business at Baroda and accordingly answered the first question in the affirmative. As regards the second question, the Gujarat High Court analysed the ratio of the decision of the Supreme Court in ***Challapalli Sugars Ltd* v. *Commissioner of Income Tax:*** *(1975) 98 ITR 167 (SC)* as follows:-

> "………In order to understand the ratio of the decision in *Challapalli Sugars Ltd's* case, and with a view to see how far the said ratio is in harmony with the ratio of the above-referred decision of the Supreme Court in *India Cements Ltd's* case, it would be necessary to state shortly the facts relating to that decision. There the assessee was a public limited company engaged in the manufacture and sale of sugar. The company went into production on January 22, 1958. It had borrowed considerable sums of monies from the Industrial Finance Corporation of India for the installation of machinery and plants. During the accounting period, the company paid Rs 2,38,614 as interest and claimed that the said payment should be treated as part of the cost of the machinery and plant installed by it, and the depreciation should be calculated accordingly. The Income Tax Officer rejected this claim of the company and held that the interest paid by the company from year to year was revenue expenditure. The matter eventually went to the Andhra Pradesh High Court which held that where a plant is constructed out of borrowed money, the interest on loan upto the date of commencement of the business could not be capitalized or treated as part of the actual cost of the plant. The Supreme Court rejected this view of the High Court on consideration of the question as to what was the "actual cost" for the purpose of determining "written down value" of a plant. The Supreme Court

considered the principles of accountancy and held that the cost of fixed assets should include all expenditure necessary to bring such assets into existence and to put them in working condition and, therefore, in case money is borrowed **by a newly started company which is in the process of constructing and erecting its plant, the interest incurred before the commencement of production on such borrowed money can be capitalized and added to the cost of fixed assets which have been created as a result of such expenditure.**"

6.4 The Gujarat High Court, after analyzing the decision of the Bombay High Court in ***Calico Dyeing and Printing Works*** v. ***Commissioner of Income Tax:*** *(1958) 34 ITR 265* and of the Supreme Court in ***India Cements Ltd*** v. ***Commissioner of Income Tax:*** *(1966) 60 ITR 52* and in ***Challapalli Sugars Ltd*** v. ***Commissioner of Income Tax:*** *(1975) 98 ITR 167,* concluded as follows:-

"…. It is no doubt true that in the case of *Challapalli Sugars Ltd* the Supreme Court has unequivocally observed that interest paid on the borrowing utilised to bring into existence a fixed asset which has not gone into production goes to add to the cost of installation of that asset. **But these observations have been made with reference to a situation wherein it was not possible to contend that the borrowing on which interest was paid was made for the purpose of any business. The company which had made the borrowing in that case had not yet started production, and hence had not commenced any business when it borrowed the amount in question.** Therefore, it was not possible to say in that case that the borrowing was made "for the purposes of the business" to bring the case within the ambit of Section 10(2)(iii) of the Indian Income Tax Act, 1922 (which is equivalent to Section 36(1)(iii) of the Act of 1961). **If the said borrowing was not "for the purpose of business" in as much as no business had come into existence, it must follow that it was made for the purpose of acquiring an asset which could be put**

to use for doing business, and hence interest paid on such borrowing would go to add to the cost of the assets so acquired.

……. The question is, is this line of reasoning inconsistent with the view taken by the Bombay High Court in *Calico Dyeing and Printing Works,* or by the Supreme Court in *India Cements Ltd* ? On proper analysis the reasoning on which the view taken by the High Court of Bombay and the Supreme Court in the above-referred cases rests is as under:

Section 10(2)(iii) of the Act of 1922 allows deduction of interest on all borrowings which are made "for the purposes of business". **The expression "purposes of business" is comprehensive enough to cover expenditure of revenue nature as well as of capital nature because both the types of expenditures can be incurred for business purposes. Therefore, even if a borrowing is made for incurring an expenditure of capital nature, it remains the borrowing for a business purpose. If that is so, the requirements of Section 10(2)(iii) of the Act of 1922 are fully satisfied and interest paid on** such borrowing is entitled to deduction as revenue expenditure. The High Court of Bombay has unequivocally stated in *Callico Dyeing and Printing Works* that in order to attract the provisions of Section 10(2)(iii) it does not matter whether the capital is borrowed in order to acquire a revenue asset or a capital asset, because all that the Section requires is that the assessee must borrow the capital for the purpose of his business. This dichotomy between the borrowing of a loan an actual application thereof in the purchase of a capital asset, seems to be on the ground that a mere transaction of borrowing does not, by itself, bring any new asset of enduring nature into existence, and that it is the transaction of the investment of the borrowed capital in the purchase of the new asset which brings that asset into existence. **Since the transaction of borrowing is not the same as the transaction of investment, the Supreme Court has observed in *India Cements Ltd vs Commissioner of Income Tax* that, for considering whether payment of interest on a borrowing is revenue expenditure or not, the purpose for which the borrowing is made is irrelevant.** Thus, the decisions **of the Bombay High Court in *Callico Dyeing and Printing Works* and of the Supreme Court in *India Cements Ltd* were given with reference to the borrowings made for the purposes of running businesses, while the decision of the Supreme Court**

> **in *Challapalli Sugars Ltd* was given with reference to the borrowings which could not be treated as made for the purposes of business, as no business had yet been commenced. Thus, there is no incompatibility between these decisions.** The Supreme Court itself had distinguished its earlier decision in *India Cements Ltd* in the following terms in *Challapalli Sugars Ltd*:
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> "This case too is of no assistance to the revenue. The appellant-company in that case at the time it raised the loan was a running concern. Unlike the assessees in the present appeals, the loan raised by the appellant-company in the cited case was not before the commencement of production but at a later stage. The question of including the interest paid on the loan before the commencement of business in the actual cost of plant did not arise in that case."
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> In view of this, we conclude that the decisions of the Bombay High Court in *Callico Dyeing and Printing Works* and of the Supreme Court in *India Cements Ltd,* hold the field with equal force, even after the decision in *Challapalli Sugars Ltd.* ….."

7. The upshot of the aforesaid decisions as applied by the Tribunal in instant case is that:-

(i) a loan taken or capital borrowed is, by itself, not a capital asset, nor does it give an advantage of an enduring nature;

(ii) as long as a loan was taken or capital was borrowed for the purposes of business, the assessee is entitled to claim interest paid thereon as deduction under Section 36(1)(iii) of the Act;

(iii) interest may have to be capitalized after the borrowed capital or loan taken is utilized in bringing into existence an asset at the

stage of commencement of business. In other words, after the assessee's business had already commenced then the interest paid on capital borrowed or loan taken can be claimed as deduction under Section 36 (1)(iii) of the Act.

(iv) in coming to the conclusion whether the interest paid on capital borrowed or loan taken in setting up a new line of business ought to be capitalized or treated as revenue expenditure, the test as laid down by the Supreme Court in the case of ***Produce Exchange Corporation*** *(supra)* and ***Prithvi Insurance Company*** *(supra)* would be relevant and;

(v) lastly, as long as interest is paid on capital borrowed or loan taken in respect of new line of business which is in the same business fold for the purposes of ascertaining income under Section 28 of the Act, it can be claimed as a deduction under Section 36(1)(iii) of the Act.

8. In the instant case, the Tribunal has returned the finding that there is a unity of control and management, in respect of the ferro alloys plant as well as the sugar plant and there is also intermingling of funds and dove-tailing of businesses. In these circumstances it cannot be said that the respondent/assessee had not commenced its business and hence, interest

would have to be capitalized in terms of the ratio of the judgment in the case of ***Challapalli Sugars Ltd*** *(supra).* If that is not so then, the only other conclusion that is possible on these facts, is that, the interest was paid by the respondent/assessee on borrowed capital for the purposes of business. That being the case, in our view, the Tribunal correctly allowed the financial charges i.e., interest paid to the extent of Rs 3,50,83,472/- as deduction under Section 36(1)(iii) of the Act.

9. These being the findings of fact, we do not consider it fit to interfere with the impugned judgment of the Tribunal. Accordingly, we hold that there is no question of law, much less a substantial question, which arises for consideration. In the result, the appeal is dismissed.

RAJIV SHAKDHER, J.

BADAR DURREZ AHMED, J.

November 21, 2008
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