% 21.10.2009

37, 39, 40, 41, 43#

Present: Ms. P.L. Bansal, Adv. for the appellant.
Mr. C.S. Aggarwal, Sr. Advocate with Mr. Prakash Kumar, Adv. for the respondent.

(*Common Orders*)

CM Appl. Nos. 13391, 13397, 13398, 13399 & 13465/2009 (exemption)

Allowed, subject to just exceptions.

All CMs are disposed of.

+ ITA Nos. 984, 988, 989, 991, and 1009/2009

Except in ITA Nos. 988 and 989/2009 wherein three issues have been raised, in all other appeals, two issues are raised which are common in these two appeals as well. The first issue is in respect of expenditure incurred upon the Puja, Hawan, etc. which has already been decided by this Court in a batch appeal filed by the Revenue with leading case as ITA No.986/2009 entitled ***Commissioner of Income Tax*** Vs. ***Mohan Meakin Ltd.*** decided on 15.10.2009, holding that no question of law arises in respect of all these issues which need to be determined.

Second question relates to state excise duty valua closing stock. The Assessing Officer (AO) has enhanced the value of the closing stock by making addition of the said excise duty on notional basis. The CIT (A) deleted this addition, which view of the CIT(A) has been confirmed by the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal') as well. The learned counsel for the respondent has pointed out that the same issue had arisen in the Assessment Year 1984-85. The AO had added the state excise duty on notional basis on the premise that this duty becomes payable on the date goods are manufactured/produced. The submission of the assessee, even at that time, was that the state excise duty is not based on production, but can be recovered only on removal of goods as per the law. This issue had gone up to the Tribunal and the Tribunal in ITA Nos.322/Del./1988 and 732/Del./1988 had decided the said appeal vides its order dated 31.01.2001 in the following terms:

> "67. After considering the rival submissions and the materials on the file, we are of the view that the matter should be set aside and restored to the AO for fresh finding after hearing the assessee and verifying the facts including the provisions of law relating to the levy of excise duty on bear and spirit. The learned AR of the assessee submitted that in the case of manufacture of liquor excise duty is leviable

by the respective consuming State, i.e., if it is to consumed in Delhi at the rate applicable, in Delhi and if it is in Kerala at the rate applicable for Kerala. He also submitted that it is not debited in P&L A/c and therefore what is not debited to the P&L A/c cannot be part of cost of goods. The AO is directed to verify the submission of the Ld. AR of the assessee. He should clearly ascertain the fact about the levy of excise duty on manufacture forming part of the cost of goods and any other duty levied at the place of sale which would not form part of the cost of goods and then decide the issue in proper perspective. Accordingly, the matter is set aside and restored to the AO."

After the matter was remanded back to the AO, the AO called for further information from the assessee. The assessee had also produced the letter of certificate from the Excise Authorities with reference to levy of duties. As per the said certificate, it was categorically stated that "**no excise duty is payable** on manufacturing of beer under Section 28 of U.P. Excise Act....." On the basis of aforesaid certificate and after going through the relevant provisions of the State Excise Manual, 1974 as well as the U.P. Excise Act, the AO categorically opined that the excise duty does not for part of closing stock in the case of the assessee since excise duty becomes due only on removal/sale and not at the time of manufacture. On this basis, the assessment was framed and notional state excise duty was

not added the closing stock. This position remained till 1989-9 for the first time in the Assessment Years 1989-90, 1990-91. No addition is made with effect from 1995-96 till date as well. The AO in the assessment order framed for that year took view, which was taken earlier in the Assessment Year 1984-85, *viz.*, excise duty becomes payable on the manufacture/production of the goods. In respect of Assessment Year 1993-94 for which ITA No.988/2009 is filed, the AO had disallowed the loss on sale of foreign cars. At the same time, he brought to tax the gain arising out of sale a gold coin mar. It is not in dispute that two cars were brought as business assets and if there was loss on the sale of these two cars, it could be claimed as capital loss under Section 45 of the Act.

Having regard to the proceedings in respect of Assessment Year 1984-85, as noted above, we are of the view that the Tribunal has rightly deleted this addition, which was necessitated with principle of consistency as well. Therefore, no substantial question of law arises.

Third issue which is raised in respect of Assessment Year 1992-93 and 1993-94 in ITA Nos.988 & 989/2009 is regarding capital gain on sale of assets value thereof was less than Rs.5,000/-. We are

of the opinion that this issued is covered by the judgment Supreme Court in the case of ***Nectar Beverages Pvt. Ltd.*** Vs. ***Deputy Commissioner of Income Tax***, 314 ITR 314.

The argument raised in the said case before the Supreme Court was the same as raised before us, which can be found from the reading of para 7 of the aforesaid judgment. After discussing in detail, the scheme of computation of business income is under Section 41 of the Act on the premise that profits income, if any, charged to tax are covered under that provision only. In para 12, the Supreme Court categorically held that profits on sale of such assets were not taxable as a balancing charge, either under Section 41(1) or Section 50 of the Act.

The learned counsel for the Revenue argues that question of law posed in the said case is entirely different and there is no discussion by the Supreme Court in the said judgment as to why the profits on sale of such assets should not be taxed under Section 50 of the Act. Suffice it to state that the aforesaid categorical pronouncement by the Supreme Court is binding on this Court under Article 141 of the Constitution.

In view thereof, we are of the opinion that no que
law arises on this aspect as well.

All these appeals are accordingly dismissed.

A.K. SIKRI, J.

SIDDHARTH MRIDUL, J.

October 21, 2009
pmc