



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA No . 410/2004

Reserved on : 6th August, 2009
Pronounced on : 11th September, 2009

TRIVENI ENGINEERING & INDUSTRIES LTD. ...Appellant
Through: Mr. Ajay Vohra, Ms. Kavita Jha,
Ms. Akansha Aggarwal, Mr. Sriram Krishna,
Advocates.

VERSUS

THE COMMISSIONER OF INCOME TAX-XIX, NEW DELHI ..Respondent
Through: Mr. Sanjeev Sabharwal, Mr. M.P.Gupta,
Mr. Arvind Kumar Verma, Advocates

CORAM:

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

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VALMIKI J.MEHTA, J

1. Three issues are urged by the appellant M/s. Triveni Engineering & Industries Ltd. in this appeal under Section 260-A of the Income Tax Act, 1961. The same are as under:

(i) The first issue pertains to the addition of Rs. 1,68,71,980/- on account of valuation of closing stock by not accepting the change in the



method of valuation of closing stock of levy sugar to lower of cost or average realisable value of levy and free sale sugar to lower of cost or realizable value.

(ii) Disallowance of deduction with respect to interest payable amounting to Rs. 21,15,615/- in terms of Section 36(1)(iii) and Section 43-B(d) of the Act.

(iii) Whether the liability to pay interest on the excess realization for levy sugar pursuant to the order of the Allahabad High Court was a contingent liability or a crystallized liability?

2. Each of the aforesaid issues have been held against the appellant concurrently by all the three authorities below, namely, the Assessing Officer, CIT(Appeals) and the Income Tax Appellate Tribunal. The relevant Assessment Year is 1991-92.

3. As regards the issue raised with regard to rejecting the method in the change of valuation of closing stock, we find that the finding arrived at by the three authorities below that the change in the valuation of closing stock was not bona fide is a pure finding of fact and no question of law arises much less a substantial question of law. We also agree that the change in the method of valuation of the closing stock was not bona fide because the authorities below have noted that for the assessment year in question seeking of change in the method of valuation of the



closing stock was in the year where there were huge rise in the profits the assessee company and the change was adopted in order to reduce profits in the relevant year. The fact that the change is not bona fide is more than abundantly clear from the fact that the assessee once again switched back to the old method of valuation of closing stock just one year thereafter in the assessment year 1993-94. The contention of the counsel for the appellant that assessee company was entitled to follow a scientific basis for valuation of the closing stock is not in issue because no doubt a company can adopt such a method for valuation of the closing stock, but, such valuation of closing stock had to be adopted on a consistent basis and cannot be changed to suit the convenience of the assessee so as to deprive the revenue of legitimate tax. It is rightly been found by all the authorities below that the change in the valuation stock was not bona fide. Nothing further need be said on this aspect.

4. The second issue pertains to disallowance of the claim of interest. As per the assessee company, it was entitled to claim of interest because interest accrues daily and the same did accrue as per the mercantile system of accounting adopted by the assessee with respect to the loan obtained by it from the Industrial Finance Corporation of India(IFCI). The repayment of the said loan along with the interest thereon was to be made in five yearly instalments which were payable on 18.11.1996,



18.11.1997, 18.11.1998, 18.11.1999 and 18.11.2000. The Assessing Officer made a disallowance of Rs. 21,15,615/- representing the aggregate amount of interest accrued but not due upto 31.3.1991 holding that since the interest was payable only on 18.11.1996 for the first time, no deduction was admissible to the appellant. The CIT(Appeal) affirmed the order of the Assessing Officer and further held that the claim of interest was not allowable in terms of Section 43B(d) of the Act.

We do not find any error in the approach of the authorities below. Merely because the interest was debited in the books of accounts maintained on mercantile basis would not mean that the interest had become due and accrued because admittedly the interest liability would become due not during the relevant previous year but only for the first time on 18.11.1996. Thus, interest cannot be said to have accrued to become due and payable in the relevant previous year. The stand of the assessee is incongruous because on the one hand it claims that interest became due and accrued in the relevant previous year however in the same breadth it admits that the same would be due and payable only with effect from 18.11.1996. The concept of debiting the books maintained on mercantile basis is on the principle that the payment has become due and payable and since it has become payable it is therefore debited in the books of accounts. Admittedly, in the present case the



interest was not due and payable from the relevant previous year.

Further, the provision of Section 43B(d) directly and categorically disentitles the assessee company to claim benefit of interest deduction because with respect to interest due and payable to a financial institution such as the IFCI till the interest is actually paid, the same cannot be allowed as a deduction. The relevant provision of Section 43B is reproduced below:-

“43B. Certain deductions to be only on actual payment

Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of—

.....
(d) any sum payable by the assessee as interest on any loan or borrowing from any public financial institution or a state financial corporation or a state industrial investment corporation, in accordance with the terms and conditions of the agreement governing such loan or borrowing;

.....
Shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him:

.....”

5. The aforesaid provision makes it more than abundantly clear that interest can only be allowable when the same is actually paid and not merely because the same is due as per the method of accounting adopted



by the assessee. Any other interpretation as suggested by the appella that the interest should be allowed even when not actually paid will defeat the very purpose of Section 43B. The contention of the assessee that it has received the loan from Sugar Development Fund administered by the Ministry of Sugar, Government of India, is liable to be rejected at the threshold because admittedly the loan is obtained from IFCI by the assessee. It is the IFCI with whom the documentation for the loan has been signed and to whom the loan along with the interest is repayable. Merely because the Sugar Development Fund is under the overall control and administration of the Ministry of Sugar, Government of India does not mean that the loan is not given by the IFCI. The other contention raised by the appellant relying upon the judgment of the Andhra Pradesh High Court in the case **Srikakollu Subba Rao & Co. and Ors. Vs. Union of India and Other, 173 ITR 708** that where the amount is not due for payment before the end of the relevant previous year such amount though having accrued could not be disallowed under Section 43B(d) of the Act, cannot be accepted by this Court because the same would negate the intention of existence of Section 43B(d) and would render otiose the expression “actually paid” occurring in the provision. Further we feel that in view of the categorical language used in the relevant provision,



we need not refer to the other sub-sections and exceptions of Section 43B.

6. The last issue which has been urged by the appellant is with respect to its liability on account of interest paid for excess realisation of the price for levy sugar on account of orders obtained in the legal proceedings filed by it before the Allahabad High Court. The appellant had filed a writ petition before the Hon'ble Allahabad High Court challenging the fixation of levy price of sugar of Western U.P. Zones. The Allahabad High Court vide an interim order had allowed the appellant to supply levy sugar at a price claimed by the appellant company subject to the following conditions:

- (i) that the appellant would furnish advance bank guarantee for the excess realization along with interest, and
- (ii) that in the event of the ultimate orders of the High Court going against the appellant, the appellant would have to refund the excess realization along with interest @ 12 ½% per annum.

7. Pursuant to the interim order the appellant had realized an excess price of levy sugar of Rs. 158 lakhs. When the Writ Petition filed by the appellant had been dismissed by the Allahabad High Court, the excess amount realized by the appellant company due to the price of levy sugar became repayable along with interest in terms of interim orders of the Allahabad



High Court. However, the appellant preferred a Special Leave Petition before the Hon'ble Supreme Court against the final judgment of the Allahabad High Court dismissing its Writ Petition. The contention of the assessee company is that since no interim orders were passed by the Supreme Court which directed the payment of the amount in instalments, the liability of payment under the orders of the Allahabad High Court stood crystallized and cannot be said to have been contingent. We clearly feel that the argument of the appellant company is misconceived because could it not be that it would have succeeded in its claim before the Supreme Court for setting aside the order of the Allahabad High Court? Once this issue was alive and pending and the appellant company could have succeeded in the Special Leave Petition in the Hon'ble Supreme Court, clearly, the liability remained contingent and could not be said to have been crystallized because had the assessee succeeded before the Supreme Court, the interest would not have been payable. Of course, the position would have been different had the judgment of the Allahabad High Court reached finality either by the appellant not challenging the same before the Supreme Court or the Supreme Court having dismissed the SLP, and which is not the position in the present case. It was because of the fact that assessee was hopeful in succeeding that SLP was filed, and surely then it does not lie in its mouth to say that



the liability was still not a contingent liability. There is no merit in the ground either as urged by the appellant company.

8. In view of the above, we dismiss the present appeal with costs which are quantified at Rs. 25,000/- keeping in view the fact that all the three authorities below have concurrently and validly disagreed with the contentions of the appellant company giving adequate reasons and this fourth attempt of the appellant company has also been dismissed by us for the reasons above stated.

VALMIKI J. MEHTA
JUDGE

A.K. SIKRI, J
JUDGE

September 11, 2009

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