



\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA No. 769/2009

August 21, 2009

COMMISSIONER OF INCOME TAX .....Appellant

Through: Ms. Rashmi Chopra, Advocate.

VERSUS

RANCAN IMPEX PVT. LTD. ....Respondent

Through: Mr. T.R.Talwar, Advocate with Mr. Manu  
K. Giri, Advocate.

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

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A.K. SIKRI, J

1. Two issues arise and have been urged by the revenue/appellant in this case. The first issue pertains to depreciation. With regard to this issue, the following question of law has been urged:

“Whether on the facts and in the circumstances of the case, the Ld. ITAT erred in law and on merits in allowing Rs.11,05,552/- on account of fixed assets written off?”



The second issue pertains to deferred revenue expenditure and with respect to which, the following question of law is urged:

“Whether on the facts and in the circumstances of the case, the Ld. ITAT erred in deleting the addition of Rs.10,34,703/- on account of deferred revenue expenditure?”

2. With regard to depreciation, the Assessing Officer held that since the assessee was not an undertaking engaged in generation or generation and distribution of power, it was not entitled to depreciation. The basis of this view of the Assessing Officer was Section 32(1)(i) dealing with the deductions. Not much need be stated about this aspect in as much as the CIT (A) and the I.T.A.T. have rightly held that provision of Section 32 which relates to depreciation, deals with entitlement of deduction under various sub-clauses of deductions, namely, (i)(ii)(ia) and (iii), and, the deduction with respect to depreciation is not confined to sub-clause (i) which pertains only to undertakings engaged in generation or generation and distribution of power. Deduction in the present case was qua Section 32(1)(iii) and with reference to buildings, plant and machinery. The Assessing Officer had clearly fallen into an error, in this regard, and which error has been corrected by the CIT(A) and I.T.A.T.

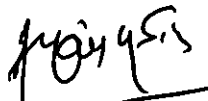
3. The second issue pertains to disallowance of the deferred revenue expenditure. The learned counsel for the appellant has urged that the deferred



revenue expenditure has been allowed by the CIT(A) and I.T.A.T. merely on ... ground that it was allowed in the previous year. It is urged that the same was allowed in previous year not under Section 143(3) but under Section 143(1)(a) and which is simply a notice of assessment and not an order after due consideration which would be in a case falling under Section 143(3). The learned counsel, therefore, submitted that that simply because deferred revenue expenditure was allowed in the previous year, the same cannot be a basis for allowing depreciation in the relevant assessment year 2003-04. While taking this proposition in isolation, the appellant may be correct, however, in the facts of the present case, it is quite clear that assessee has consistently followed a policy of amortisation over different years for the deferred revenue expenditure. That deferred revenue expenditure can be amortized over different years is clear from the judgment of Supreme Court in *CIT Vs. Madras Industrial Investment Corporation 1997(4) SCC 666*. We take on record, at this stage, the statement of the counsel for the respondent that the Assessing Officer in the subsequent year after the relevant assessment year has in fact allowed a further part of the deferred revenue expenditure. Accordingly, following the decision of the Supreme Court in *Madras Industrial Investment Corporation's* case (supra) as also the action of the Assessing Officer of allowing the further portion of the deferred revenue expenditure in the succeeding Assessment Year, we feel that the decision, in this regard, of the CIT(A) and I.T.A.T. is correct.



4. In view of the fact no substantial question of law arises.
5. Dismissed.

  
A.K. SIKRI, J

  
VALMIKI J. MEHTA, J

August 21, 2009  
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