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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI****ITA 112/2009**

COMMISSIONER OF INCOME TAX DELHI-IV ..... Appellant

Through: Mr. N.P. Sahni, Advocate

versus

DEWAN STEELS LTD. .... Respondent

Through: None

% DATE OF DECISION: August 27, 2010

**CORAM:****HON'BLE MR. JUSTICE A.K. SIKRI****HON'BLE MS. JUSTICE REVA KHETRAPAL**

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

**A.K. SIKRI, J. (ORAL)**

1. Following question of law is raised in this appeal:-

“Whether the ITAT was correct in law in deleting addition of ₹ 89,99,170/- made by the Assessing Officer u/s 43B of the Income Tax Act, 1961 on account of interest payable to IDBI Bank?”

2. Even on second call, nobody has appeared on behalf of the respondent in spite of service of notice upon the respondent. In these circumstances, we have left with no option but to hear the matter in the absence of the respondent-assessee.
3. The issue involved in the present case is as to whether the



Act is sustainable in law. This amount, which was payable by the assessee as interest to IDBI Bank, was disallowed by the Assessing Officer under Section 43B(d) as the same was not paid during the current assessment year. The assessee had taken a stand that this has been on account of payment of lease rent which fact was found to be incorrect by the assessing officer after making necessary inquiries from the IDBI Bank and even during the course of proceedings before the CIT(A), the assessee had failed to prove that this amount was not payment of interest but payment of lease rent.

4. The order of the CIT(A) reveals that he had given specific opportunity to the respondent to submit the confirmation from IDBI whether the lease rent claimed by the assessee payable to the IDBI had been shown as lease rent or interest receivable. In spite of this opportunity given, the assessee failed to submit any confirmation from IDBI. Under these circumstances, CIT(A) while confirming the addition observed as under:-

*“It is important to mention here that the appellant company have entered for a financing arrangement with the IDBI and the lease for plant and machinery was in fact a financing arrangement between the appellant company and IDBI. The lease rent is in fact as claimed by the appellant is a financial charges payable by the appellant company to IDBI. It is also inquire from the appellant company whether the payment has been made by the appellant company till date to IDBI or not. The authorized representative of the appellant has confirmed the fact that the so called lease rent payable to IDBI has not been paid till date. In*



*contentions of the appellant company is not acceptable. In fact the appellant company has in fact taken a term loan from IDBI and interest is payable on it. The interest or financial charges payable to IDBI is allowable subject with the provisions sections 43B of the Income Tax Act. There is no doubt that the amount of ₹ 89,99,170/- is payable to IDBI till date. Hence, the interest expenses/financial charges are disallowable u/s 43B of the Income Tax Act. The assessing officer has rightly disallowed the same. The order of the assessing officer on this ground is hereby confirmed."*

5. The ITAT vide impugned order has deleted this addition. It has mainly gone by the fact that the Department had not disputed that the transaction in question was not lease transaction and once it is accepted as lease transaction, the payment made could not be treated as interest unless the Department treats the transaction as finance transaction or loan transaction. This reasoning, to our mind, on the basis of which the entire addition was deleted is not proper. The Tribunal could have gone into the nature of transaction and could not have assumed that if it is a lease transaction it is not in the nature of finance transaction. There are various types of lease transactions by the finance companies. In the present case, the transaction was entered into by the assessee with IDBI Bank which is a financial institution. Therefore, it was necessary for the Tribunal to go into the nature of the transaction based on the agreement which was entered into between the assessee and IDBI Bank which would have reflected the true nature of the said transaction, namely, whether it was a finance transaction or a lease transaction simplicior.



give by CIT(A) which is extracted above has been ignored and is not dealt with by the Tribunal. As we do not have the complete records and the assessee also was not appeared, therefore, we are not in a position to determine the true nature of the transaction. In these circumstances, we have no option but to set aside the order of the Tribunal and remit the case back to the Tribunal for fresh consideration after analyzing the nature of the transaction in question.

Appeal stands disposed of in the above terms.

A.K. SIKRI, J.

REVA KHETRAPAL, J.

AUGUST 27, 2010  
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