R-199

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

ITR No. 89 OF 1993

% Date of Decision: 01.09.2010.

COMMISSIONER OF INCOME TAX . . . Appellant

Through : None

VERSUS

M/S BASTI SUGAR MILLS CO. (LTD) . . .Respondent

Through: Ms. Prem Lata Bansal, Advocate

CORAM :-

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

1. Whether Reporters of Local newspapers 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?

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

1. The following two questions are referred for opinion of this Court at the instance of the revenue:-

> "1. Whether on the facts and in the circumstances of the case, the ITAT was correct in law in holding that a sum of Rs, 2,28,273/- was not disallowable out of interest claimed by the assessee by ignoring the material fact that the assessee had not charged any interest from its sister concern?
>
> 2. Whether on the facts and in the circumstances of the case, the ITAT was correct in law in holding that a sum of Rs. 2,25286/- representing amount transferred to the mollases storages fund account was an allowable deduction by ignoring the material fact that this was actually a provision?"

2. The facts regarding question no.1 are that the assessee company borrowed large sums of money from banks and others and paid a huge

interest of about Rs. 66,00,000/- on these borrowings. The assessee also gave interest-free loans and advances to its sister-concerns details of which are mentioned in the order of the Assessing officer and of the Commissioner of Income-tax (appeals). Calculating the interest @ 16.5% on the average balances of these 8 or 9 parties, the assessing officer added an amount of Rs. 2,28,273/- to the income of the assessee. The Commissioner of Income Tax (Appeals) observed that there was no co-relation between the sums borrowed and the amounts advanced as loans. She also found that on identical facts, the Tribunal in the assessee's own case for assessment year 1977-78 vide order dated 3.11.1983 had deleted the addition and thereafter aggrieved of that order, the revenue filed appeal before the Tribunal. The Tribunal, *inter alia,* found that the revenue was not able to establish any nexus between the amount borrowed by the assessee company on interest and the amounts advanced by the assessee to its sister-concerns. In fact major parties from whom interest was not charged were the same as in assessment year 1977-78 for which the Tribunal held that there was no warrant for adding any notional or deemed interest. Even in respect of other parties, a finding of fact was recorded that balances were old and no new loans had been advanced in the year under consideration. This is when it is found that there was no nexus between the money borrowed by the assessee from the banks and utilized for its own business purpose and the money which was given by the assessee to its sister-concerns as interest free loans and advances in the earlier years, question of disallowing the interest claimed by the assessee on the money borrowed by it would not arise. This issue is now squarely covered by the judgment of Supreme

Court in the case of ***S.A. Builders Ltd.*** *Vs.* ***Commissioner of Income Tax (Appeals And Another***, *288 ITR 1* where the Supreme Court observed as under:-

> "In order to decide whether interest on funds borrowed by the assessee to give an interest free loan to a sister concern (e.g., a subsidiary of the assessee) should be allowed as a deduction under section 36(1) (iii) of the Income tax Act, 1961, one has to enquire whether the loan was given by the assessee as a measure of commercial expendiency. The expression "commercial expediency is one of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation, but yet it is allowable as business expenditure if it was incurred on grounds of commercial expediency"

3. This question is, therefore, decided in the affirmative i.e. in favour of the assessee and against the revenue.

4. In so far as the second question is concerned, that also stands determined by the judgment of the Supreme Court in the case of ***269 ITR 397-398*** in favour of the assessee.

5. Both the questions are answered accordingly.

(A.K. SIKRI)
JUDGE

(REVA KHETRAPAL)
JUDGE

SEPTEMBER 1, 2010
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