



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

% *Judgment reserved on: 08.9.2011*  
*Judgment delivered on: 19.9.2011*

+ **ITA No.1940/2010 & CM No.21643/2010 (for delay)**

COMMISSIONER OF INCOME TAX-II .....Appellant  
Through: Mr.Sanjeev Sabharwal,  
Advocate.

Versus

M/S MONNET POWER LTD. ....Respondent  
Through: Mr.Ajay Vohra, Ms.Kavita Jha  
and Mr.Somnath Shukla,  
Advocates.

AND

**ITA No.1841/2010**

COMMISSIONER OF INCOME TAX-II .....Appellant  
Through: Mr.N.P.Sahni, Advocate.

Versus

M/S MONNET POWER LTD. ....Respondent  
Through: Mr.Ajay Vohra, Ms.Kavita Jha  
and Mr.Somnath Shukla,  
Advocate.

**CORAM:**  
**HON'BLE MR.A.K.SIKRI**  
**HON'BLE MS. JUSTICE INDERMEET KAUR**

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

**INDERMEET KAUR, J (per se).**

1. M/s Monnet Power Pvt. Ltd. (hereinafter referred to as the assessee ) is a private limited company engaged in the business of manufacture and sale of Ferro Alloys as also generation and sale of power. It had filed its return for the assessment year 2003-04 on 28.11.2003; a loss of Rs.10,90,40,470/- was declared which was assessed under Section 143(3) of the Income Tax Act (hereinafter referred to as the 'said Act'). During the assessment proceedings it was noted that an amount of Rs.8,06,19,863/- was debited as revenue expenditure incurred during the existing assessment year as a 'pre operative expenses'; details of the said expenditure are as follows:

Salary, Wages , Allowance etc.	12065466.60
Administrative & other expenses	16853441.05
Financial Charges	51230164.77
Stores Consumed	470790.77
Total	80619863.19

2. In the explanation furnished by the assessee, it was stated



that the unit has been expanded from 7.50 MW to 45 MW and the capacity of Ferro Alloys was also undergoing expansion from 12000 TPA to 24000 TPA and this expenditure had been incurred for the said purpose.

3 The Assessing Officer (AO) vide his order dated 28.11.2005 held the aforementioned 'pre operative expenditure' as capital in nature; this deduction was disallowed. Penalty proceedings were also initiated under Section 271 (c) Income Tax.

4 On 23.07.2007, CIT(A) upheld the order of the AO holding the said expenditure to be a capital in nature.

5 On 18.09.2009, ITAT reversed this finding of the CIT(A).

6 Revenue has filed the present appeal. The quantum as also the penalty proceedings are the subject matter of the appeal. The details of the 'pre operative expenditure' have been noted supra.

7 The substantial question of law framed on 08.09.2011 reads as under:-

"Whether learned ITAT is erred in deleting the addition of pre-operative expenditure of ₹80619863 being capital in nature under Section 37 of the Income Tax Act, 1961?"

8 Section 36(1)(iii) is relevant:

36.(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in Section 28-



(iii) The amount of the interest paid in respect of capital borrowed for the purpose of the business or profession;

[Provided that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset for extension of existing business or profession (whether capitalized in the books of account or not); for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction.]

The proviso to Section 36(1) (iii) has been inserted by the Finance Act of 2003 i.e. w.e.f. 01.4.2004. Admittedly it is prospective in operation and has no application to the assessment year in question. This has also been held by the Apex Court in 105(2008) CLT 433(SC) Deputy Commissioner of Income Tax, Ahmedabad Vs. Core Health Care Ltd.

9 The Supreme Court in Core Health Care Ltd. (Supra) after a consideration of the provisions of Section 36(1)(iii) and Explanation 8 to Section 43(1) of the Income Tax Act had held that interest on monies borrowed for the purpose of business is a necessary item of expenditure in a business; for allowance of a claim for deduction of interest under the said section, all that is necessary is that:-

“Firstly, the money i.e. capital borrowed and secondly, it must have been borrowed for the purpose of business; thirdly the assessee must have paid interest on the borrowed amount.”



10 In the instant case, undisputed facts are that the assessee had borrowed moneys for the purpose of the expansion of his business and he has paid the aforementioned amount i.e. the 'financial charges' of ₹5,12,30,164.67 as interest on these borrowed amounts; business continues to be the same. Thus the 'financial charges' being the interest paid on the borrowings for the purpose of the business was clearly allowable as a deduction for computing the income of the assessee.

11 Qua the other expenses; it would be relevant to note that the test to determine whether a particular expenditure is revenue or not for the purpose of a business was examined by the Supreme Court in the case of (1965) 56 ITR 52(SC) Bombay Steam Navigation Vs. CIT; Supreme Court had held:

"Whether a particular expenditure is revenue expenditure incurred for the purpose of business must be determined on a consideration of all the facts and circumstances, and by the application of principles of commercial trading. The question must be viewed in the larger context of business necessity or expediency. If the outgoing or expenditure is so related to the carrying on or conduct of the business, that it may be regarded as an integral part of the profit-earning process and not for acquisition of an asset or a right of a permanent character, the possession of which is a condition of the carrying on of the business, the expenditure may be regarded as revenue expenditure."

12 In CIT Vs. Prithvi Insurance Co.Ltd. (1967) 63 ITR 632 (SC);



it was observed that in determining whether the two or more lines of the businesses may be regarded as 'the same business' or 'different business'; what has to be looked at is the nature of the business, the nature of their organization, management, source of capital fund utilized, method of book-keeping used and other related circumstances which stamp the businesses as the same or distinct.

13 Applying this test to the instant case it is clear that the aforementioned expenses detailed at 1,2 and 4 (supra) i.e. ₹1,20,65,466.60 under the head of 'salary, wages and allowances'; ₹1,68,53,441.05 as 'administrative and other expenses' and ₹4,70,790.97 as 'store consumed' expenses were expenses incurred for the improvement and benefit of the earlier business; the nature of the two lines of the business is the same and is evident from the fact that this is an 'extension' of the earlier business; this is in fact the contention of the Revenue itself; the two ventures being the same and the management and control of the two also being one and the same it is clear that this expenditure incurred for the expansion of this already existing business is liable to be deducted under Section 37 of the Income Tax Act.



14 In 140(2007) DLT 748 The Commissioner of Income Tax Vs. Relaxo Footwears Ltd. the expenditure incurred by the assessee for setting up a new unit for the manufacture of special alloy wire and billets; the business remaining essentially the same and the management of the new unit and the earlier business again being the same and there being a complete unity of control and common fund in the expanding business units set up by the assessee, the expenses incurred for the setting up the new unit were allowed as a revenue expenditure.

15 In 141 (2007) DLT 161 Commissioner of Income Tax Vs. Usha Iron and Ferro Metal Corporation Ltd. where the assessee had incurred expenditure for meeting its existing business in the sense that instead of purchasing raw material from the open market, it set up its own steel melting shop for the manufacture of the raw material which being an extension/expansion of the business, since the manufacture of the new material only amounted to a betterment of the existing business, this expenditure incurred was allowed as a revenue expense.

16 The order of the ITAT thus suffers from no infirmity. The substantial question of law is answered in favour of the assessee and against the Revenue. Appeal has no merit. Dismissed

17 Since the quantum appeal of the Revenue Department has  
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been dismissed, the appeal filed against the deletion of the penalty has become infructuous. It is also disposed of accordingly.

A handwritten signature in cursive script, appearing to read 'Indermeet Kaur', written above the printed name.

**INDERMEET KAUR, J.**

A handwritten signature in cursive script, appearing to read 'A.K. Sikri', written above the printed name.

**A.K.SIKRI, J.**

**SEPTEMBER 19, 2011**  
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