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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 645/2009

COMMISSIONER OF INCOME TAX Appellant
Through: Mr. Sanjeev Sabharwal, Adv.

versus

INDIAN RENEWABLE ENERGY
DEVELOPMENT AGENCY LTD. Respondent
Through: Mr. S.Ganesh, Sr. Adv. with
Ms. Anuradha Dua, Mr. Pawan
Sharma and Ms. Ekta Kapil,
Adv.

+ ITA 1228/2009

COMMISSIONER OF INCOME TAX Appellant
Through: Mr. Sanjeev Sabharwal, Adv.

versus

INDIAN RENEWABLE ENERGY
DEVELOPMENT LTD. Respondent
Through: Mr. S.Ganesh, Sr. Adv. with
Ms. Anuradha Dua, Mr. Pawan
Sharma and Ms. Ekta Kapil,
Adv.

+ ITA 1229/2009

COMMISSIONER OF INCOME TAX Appellant
Through: Mr. Sanjeev Sabharwal, Adv.

versus

INDIAN RENEWABLE ENERGY
DEVELOPMENT LTD. Respondent
Through: Mr. S.Ganesh, Sr. Adv. with
Ms. Anuradha Dua, Mr. Pawan
Sharma and Ms. Ekta Kapil,
Adv.

+ ITA 1234/2009



COMMISSIONER OF INCOME TAX Appellant
Through: Mr. Sanjeev Sabharwal, Adv.

versus

INDIAN RENEWABLE ENERGY
DEVELOPMENT LTD. Respondent
Through: Mr. S.Ganesh, Sr. Adv. with
Ms. Anuradha Dua, Mr. Pawan
Sharma and Ms. Ekta Kapil,
Adv.

+ ITA 1235/2009

COMMISSIONER OF INCOME TAX Appellant
Through: Mr. Sanjeev Sabharwal, Adv.

versus

INDIAN RENEWABLE ENERGY
DEVELOPMENT LTD. Respondent
Through: Mr. S.Ganesh, Sr. Adv. with
Ms. Anuradha Dua, Mr. Pawan
Sharma and Ms. Ekta Kapil,
Adv.

+ ITA 1238/2009

COMMISSIONER OF INCOME TAX Appellant
Through: Mr. Sanjeev Sabharwal, Adv.

versus

INDIAN RENEWABLE ENERGY
DEVELOPMENT LTD. Respondent
Through: Mr. S.Ganesh, Sr. Adv. with
Ms. Anuradha Dua, Mr. Pawan
Sharma and Ms. Ekta Kapil,
Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V.EASWAR



ORDER

21.10.2011

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These appeals under section 260A of the Income Tax Act, 1961 ('Act' for short) have been preferred by the Revenue against orders passed by the Income Tax Appellate Tribunal ('Tribunal' for short) which relate to the assessment years 1998-99 to 2002-03. ITA No.645/2009 which relates to assessment year 1998-99, with the consent of parties is treated as the lead case. Another issue arises for consideration in ITA No.1234/2009 and ITA No.1235/2009 which relates to the assessment year 2002-03. The said issue has been discussed separately.

2. **Common Issue** - The following question of law is framed:-

"Whether income in nature of interest on deposits, interest on staff loan, interest on Government securities, service charges for handling UNDP programme, miscellaneous income, profit on sale of fixed assets, difference in exchange rate, commitment fee and charges, application fee and MNES service charges is chargeable under the head; "business income" or under the head; "income from other sources?"

3. We have gone through the orders passed by the assessing officer, Commissioner of Income Tax (Appeal) and Tribunal for the assessment year 1998-99 and other years. In the year 1998-99, the assessing officer held that the aforesaid incomes had no nexus with the business of the assessee. He relied upon the decision of the Supreme Court in **Orissa State Warehousing Corporation vs. CIT, (1991) 237 ITR 589 (SC)** and also decision of the Madras High Court



in **Commissioner of Income-Tax, Madras-II v. S.S.Thiagarajan (Decd.)**, by LRs, (1981) 129 ITR 115. The order passed by the Commissioner of Income Tax (Appeals) is more detailed. She had examined various contentions of the assessee but rejected the same. She relied upon **Tuticorin Alkali Chemicals & Fertilizers Limited vs. CIT**, (1997) 227 ITR 172, **Express Newspaper Pvt. Ltd. vs. CIT**, 1997 227 ITR 325 and **CIT Vs. M/s. Paramount Premises (P) Ltd.** (1991) 190 ITR 259 (Bom). Some factual aspects have also been discussed and mentioned by her.

4. The Tribunal in the impugned order has referred to the earnings and the quantum thereof. Reference was made to the contentions and arguments raised by the parties and thereafter the Tribunal has given its findings in paragraph 8. The said paragraph reads as under:-

“We have considered the rival submissions. It is an undisputed fact that the assessee is a public financial institution as notified by the Government of India. The funds available with the Public Financial Institution are its commercial assets. The exploitation of the commercial assets of an assessee, which is a financial institution, would be its business. The income generated by the assessee from its lending, investments as also in compliance with the Memorandum and Articles of Association under which it has been created could be treated only as the business income of the assessee. Obviously, the assessee is not in the business of manufacture or such allied activities. The assessee is specifically using its funds available, which could be borrowed funds, or self generated funds, which are nothing but it is stock in trade for its business activities. The funds available with the assessee company are not used for acquiring



any machinery or some other stock in trade. The funds themselves have the characteristic of stock in trade, which could generate only business income. The legislature in its wisdom has held that such notified assesses, who are doing specified business as notified, any income generated out of such notified activities are exempted under section 10(23G) of the Act. Thus what is to be appreciated is, it is out of the business income of the assessee that a particular portion of the said income, which has been generated out of the specified activity that the assessee is being granted the benefit of deduction under section 10(23G) of the Act. This being so, it cannot be held that the business income generated by the assessee out of its total activities in compliance with and in accordance with its creation and its Memorandum and Articles of Association would not be its business income just because it has not been granted the benefit of deduction under section 10(23G) of the Act. This being so, the various incomes which have been held by the Assessing Officer as the income from other sources are nothing but interest incomes so also service charges received, as also the commitment fee charged as also the application fee received are in the course of the business activities of the assessee and cannot be assessed under the head "income from other sources". Further even the Miscellaneous income received by the assessee the break up of which has been found at page 10 of the paper book is nothing but the income generated by the assessee out of its business activities and the same would also have to be assessed only under the head income from business. In the circumstances the finding of the Id. Commissioner of Income-tax (Appeals) as also the Assessing Officer on this issue stands reversed and the Assessing Officer is directed to treat the incomes as assessed by him under the head income from other sources as the business income of the assessee."

5. What is discernable from the aforesaid reasoning is that Tribunal has not discussed the factual matrix pertaining to each account resulting in income, what was the nature and source of income; the purpose and object in making the said investment and in



what manner the income had arisen. The three main heads for the assessment year 1998-99 were interest on deposits amounting to Rs.5,91,32,543/-, miscellaneous income of Rs.82,22,894/- and commitment fee and charges of Rs.2,58,71,825/-. There is no discussion or consideration as to the nature and character of the said incomes. Even the Memorandum and Articles of Association have not been examined and gone into. In these circumstances, we feel that the matter requires a remit and a fresh decision by the Tribunal. If required, the Tribunal will give liberty to the parties to file additional documents. The question of law is accordingly answered. The impugned order of the Tribunal is set aside for fresh decision.

Additional Issue

6. As noticed above in ITA No.1234/2009 and 1235/2009 an additional issue arises for consideration. The following question of law is framed:-

“Whether income of the respondent-assessee is exempted under Section 10(23G) of the Income Tax Act, 1961?”

7. The Tribunal has examined the said aspect and decided the issue in favour of the assessee recording as under:-

“Ground No.1 is to the effect that on the facts and in the circumstances of the case, the Id. CIT(A) erred in allowing exemption u/s 10(23G) of the Act. It was the common case of both the parties that this issue stands covered by paragraph 8 of “B” Bench of Delhi Tribunal in ITA No.3742(Del)/2001 from assessment year 1998-99 (Supra), the necessary consequence of which is that

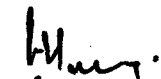


the assessee is entitled to exemption u/s 10(23G). This paragraph has already been reproduced by us in order on ITA No.2630(Del)/2005(Supra). Relying on this order, it is held that the assessee is entitled to deduction u/s 10(23G)."

8. Learned counsel for the parties agree that the aforesaid finding is cryptic and no reasons have been given. The matter requires a fresh decision by the Tribunal. On the second issue we therefore remit the matter for Tribunal for a fresh decision in accordance with law.

9. The appeals are accordingly disposed of. No costs.


SANJIV KHANNA, J.


R.V.EASWAR, J.

OCTOBER 21, 2011
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