



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

+ **ITAs No.1096/2008, 1138/2008, & 1146/2008**

% Judgment reserved on : 3<sup>rd</sup> MAY, 2011  
Judgment delivered on : 3 JUNE, 2011

**NATIONAL AGRICULTURAL CO-OPERATIVE ... APPELLANT  
MARKETING FEDERATION  
OF INDIA LTD.**

*Through:* Mr.S.Ganesh, Sr. Advocate with  
Mr.Satyen Sethi, Advocate

*Versus*

**COMMISSIONER OF INCOME TAX ... RESPONDENT**

*Through:* Ms.Prem Lata Bansal, Sr. Advocate  
with Mr.Deepak Anand.

**CORAM:**

**HON'BLE MR. JUSTICE A.K.SIKRI**

**HON'BLE MR. JUSTICE M.L.MEHTA**

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

**M.L. MEHTA, J.**

1. These appeals are against the order dated 25<sup>th</sup> January, 2008 of the Income Tax Appellate Tribunal (for short "the Tribunal") pertaining to the assessment years 1996-97, 1997-98 and 1998-99. These appeals were admitted on the following substantial questions of law:-



- (i) Whether on the facts and circumstances of the case and in law, the Tribunal was right in holding that liability to pay interest on damages awarded for breach of agreement dated 12.01.1980 to supply 50,000 metric tonnes HPS Groundnut to M/s Alimenta SA Switzerland, was not allowable deduction?
2. The appellant is a registered society primarily formed with the object to market agriculture produce for the benefit of producers/farmers. It was also entitled to independently carry on its commercial activities. The appellant/assessee entered into contract with M/s Alimenta SA Switzerland (for short 'Alimenta') for export of 5,000 MT HPS groundnut during the period February to April, 1980 subject to certain terms and conditions. On account of ban imposed by Government of India, the assessee was prohibited from exporting balance quantity of HPS groundnuts. Alimenta initiated arbitration proceedings, wherein the assessee was directed to make payment of US\$ 4681000 as damages with interest @ 10.5% from 13<sup>th</sup> February, 1981 to the date of the award i.e., 15<sup>th</sup> November, 1989. The assessee preferred appeal before the Board of Appeal which confirmed the award with some modification, i.e., the assessee was directed to pay US\$ 4526000 as damages with interest @ 11.25% from 13<sup>th</sup> February, 1981 to the date of award i.e. 14<sup>th</sup> September, 1990.



Alimenta on 8<sup>th</sup> July, 1993 initiated proceedings for enforcement of award and also claimed interest @ 18% per annum from the date of award till the date of payment. On 28<sup>th</sup> January, 2000 the High Court made award as a rule of the Court and directed the assessee to pay interest @18% per annum from the date of award till the date of realization. On 31<sup>st</sup> October, 1996 the assessee filed return for the assessment year 1996-97 declaring loss of Rs.21,84,140/-. The assessee also claimed deduction of interest being the interest for the year under consideration amounting to Rs.5,94,37,780/- on the damages awarded for breach of contract with Alimenta. The Assessing Officer relying upon its order for assessment year 1995-96, wherein also similar claim was made, disallowed the aforesaid deduction. The appeal filed by the assessee against the order of the Assessing Officer was rejected by the CIT(A) stating that the liability to pay interest flows from liability to pay damage and since liability to pay damages accrued only in the year 2000-01, on passing of decree by the Court, therefore the assessee's claim that liability to pay interest was a continuing liability and was to be allowed for all the years till the debt was discharged, cannot be accepted. It was observed that under the award, interest was to be paid for the specific period, i.e., 13<sup>th</sup>



February, 1981 to 15<sup>th</sup> November, 1989. It was observed that there was no specific order to allow interest beyond 15<sup>th</sup> November, 1989 and since rate of interest for the subsequent period was also not fixed, the liability remains uncertain and it cannot be said to have crystallized during the year. The assessee carried out an appeal before the Tribunal who vide its impugned order dated 25<sup>th</sup> January, 2008 held that as per the appellate award dated 14<sup>th</sup> September, 1990, interest on damages awarded was payable only upto the date of award i.e., 14<sup>th</sup> September, 1990. Alimenta, in suit before the Delhi High Court had claimed interest from the date of award till the date of payment by the appellant. However, the liability was disputed by the appellant who had challenged the said order of the High Court. Therefore, the Tribunal held that on the last date of the previous year for the assessment year under consideration, there was no legal liability on the part of the appellant to pay interest and that liability was crystallized only on 28<sup>th</sup> January, 2000 (i.e., assessment year 2000-01) when decree was passed by the Delhi High Court. It is against this order that the assessee is in appeal before us.

3. The facts, which have been narrated above, are not in dispute. The question that needs to be decided is as to the liability of



assessee to pay interest for the period after 14<sup>th</sup> September, 1990 (when the appellate authority passed the order). Admittedly, as per the award of the appellate authority interest was payable by the assessee on a sum awarded only up to the date of the award . The date of the award here would be taken to be the date of the order confirming the award by the appellate authority, i.e., 14<sup>th</sup> September, 1990. On 8<sup>th</sup> July, 1993, Alimenta filed an application before this Court for a decree in terms of the award wherein, it also prayed for future interest @18% per annum from the date of award till the date of payment by the assessee. It was only on 28<sup>th</sup> January, 2000, that this Court passed a decree making the award as a rule of Court and directions were given to the assessee to pay interest as claimed @18 % per annum from the date of award till the date of payment. Here also the date of award shall be taken to be 14<sup>th</sup> September, 1990. That being so, this Court directed the assessee to pay interest @ 18% from 14<sup>th</sup> December, 1990 till the date of payment. The question for consideration would be as to whether the liability could be said to have accrued to the assessee to pay this interest before the passing of the order by this Court on 28<sup>th</sup> January, 2000.



4. Learned counsel for the assessee submitted that since the award against the assessee had not only been made, but was affirmed in appeal and the liability to pay interest on the amount due to Alimenta was a continuing liability, the assessee was entitled to claim deduction of interest and the same could not be denied on the ground that assessee was disputing the liability to pay the same. He further submitted though by the award dated 15<sup>th</sup> November, 1989 interest was awarded only upto the date of award, it did not mean that there was no liability to pay interest for the subsequent period, particularly because both in equity as well as in law, interest is invariably awarded till the outstanding dues are paid. Learned counsel relied upon the case of **Rama Bai v. CIT** (1990) 181 ITR 400 (SC), wherein, interest under Section 28 of the Land Acquisition Act was held to have accrued year after year from the time possession of land was taken upto the date of actual payment of the amount of compensation. He submitted that though the decision was rendered in the context of land acquisition, however, the ratio is applicable to award made by the Arbitrators. Learned counsel also relied upon the cases of **R.C.Gupta v. CIT** (2008) 298 ITR 161; **Bharat Earth Movers v. CIT** (2000) 245 ITR 428 (SC); **Navjivan Roller Flour and Pulse Mills Ltd. v. DCIT** (2009)



315 ITR 190 and **J.K. Industries Ltd. v. UOI** 297 ITR 176.

**Faslika Electric Supply Co. v. CIT** 143 ITR 551 (Delhi)

5. On the other hand, learned counsel for the Revenue submitted that it was only with the passing of award by the appellate authority on 14<sup>th</sup> September, 1990 that the interest was confirmed. She submitted that even the interest @ 18% from the date of award till the date of realisation accrued only on 28<sup>th</sup> January, 2000, when the High Court passed the order making the award rule of the court. Learned counsel placed reliance on **Central India Electric Supply Co. v. CIT**, 247 ITR 54 (SC); **P. Mariyappa Gonder v. CIT**, 232 ITR 2 (SC); **CIT V. Hindustan Housing and Land Development Trust Limited**, (1986) 161 ITR 524; **Paragon Constructions (I) (P) Ltd. v. Commissioner of Income Tax and Anr.**, 274 ITR 413 (Delhi) and **N. Sundareswaran v. Commissioner of Income-tax**, 226 ITR 142 (Kerala).
  
6. The case of **Rama Bai** (supra) related to interest on enhanced compensation payable under the Land Acquisition Act on account of the property of the assessee acquired by the Government. Since the property was held transferred to the Government, compensation and solatium allotted to the



assessee was held to have accrued on the date on which transfer took place. Therefore, the interest allowed by the court on enhanced compensation was held to be accrued to the assessee and, therefore, was allowed to be spread over the years. The facts of the case are distinguishable inasmuch as the principle applicable in such cases is that the interest is payable on compensation and enhanced compensation as per the provisions of Land Acquisition Act. Therefore, the income was to accrue every year irrespective, of its quantification by the party acquiring the land. It was under those circumstances that interest was conceded as having accrued to him year to year and was directed to be taxed year after year from the date of delivery of decision till the date of order awarding enhanced compensation. In the case of **Faslika Electric Supply Co.** (supra), the dispute was with regard to the interest payable on award of an arbitrator where there was an acquisition of electric supply undertaking by the Punjab Government under the Punjab Electricity Act, 1939. This court held that interest payable on acquisition was a liability that arose by virtue of the provisions of Indian Electricity Act, 1910 and, therefore, would accrue from the date of taking the possession of the electricity supply undertaking on acquisition and should be taxed on year to



year basis, and cannot be taxed in one lump sum. It is noted that in this case it was laid down that an award of an arbitrator, which was not filed in the court and made rule of the court, has no force or validity.

7. In the case of **R.C. Gupta** (supra), assessee had effected certain purchases from Hindustan Steel Limited (HSL) in respect of which sum of Rs.5,06,761/- was payable. HSL filed a suit for recovery as assessee was disputing the liability. Notwithstanding the dispute, the assessee claimed deduction of the amount. This court referred to the principle as laid down in **Bharat Earth Movers v. CIT** (supra) wherein it was held that the liability was capable on being estimated with reasonable certainty when a recovery suit was filed by HSL against the assessee. Merely because the liability was not a statutory one, it cannot be said that the liability was not certain, but was merely a contingent one.
8. In the case of **Navjivan Roller Flour and Pulse Mills Ltd.** (supra) also relied upon by the assessee, it was held that the liability to pay the damages was incurred by the assessee when the trade association passed an award for damages for breach of contract. Merely because the award was challenged in the appeal could not be a ground for holding that the assessee did not incur the liability. The mere fact that the



assessee disputes a liability, is no ground for denying the claim for deduction in respect of such liability.

9. Learned counsel for the assessee also placed reliance on matching principle stating it to be basic and settled principle of accounting and/or of the Income Tax laws. In this regard, reliance was placed on the case of **J.K. Industries Ltd. v. UOI**, 297 ITR 176 and it was submitted that as per this judgment the expenditure incurred in relation to a particular item of revenue must be matched with the revenue of that period, because it is only then that the real income of the assessee for that period can be determined.
10. Invoking the ratio of the aforesaid decisions, the learned counsel submitted that the interest liability on the outstanding amount of damages accrued, inasmuch as the award against the assessee had already been made and the interest was capable of estimation with reasonable certainty. Now we may like to mention about the judgments which were cited by the learned counsel for the revenue. In the case of **Central India Electric Supply Co. (supra)**, the Supreme Court rejected the plea of the assessee that the liability had become due on its quantification after passing of the award by the Umpire. The Apex Court observed that the arbitrator was appointed through the intervention of the court and, therefore, award



had to be submitted in the court by passing a decree in terms thereof. In reference to this judgment, it was submitted by the learned counsel that in the present case, award was filed in the court and the same was made rule of the court only on 28<sup>th</sup> January, 2000. Based on this decision of Supreme Court, it was further submitted that when an award is passed and is filed in the court, the same as such is not enforceable and the amount awarded thereunder does not become recoverable till the civil court puts a seal on it and makes it a rule by passing a decree in terms thereof. The award when filed in the court, is liable to be confirmed, remitted for reconsideration or even set aside as per the provisions of the law, therefore, the amount becomes payable only when the award is made rule of the court. In the case of ***P. Mariyappa Gonder*** (*supra*), the Supreme Court held that the liability becomes crystallized when the trial court determined the amount of mesne profits in pursuance to directions given by the Supreme Court and, therefore, liability was accrued only when it was ascertained. Similarly, in the case of ***Hindustan Housing and Land Development Trust Limited*** (*supra*) also, Supreme Court held that although the award was made by the Arbitrator in July 1955 enhancing the compensation, the entire amount was in dispute and in appeal filed by the State Government.



There was no absolute right to see the amount on stage and therefore the enhanced compensation did not become income arising or accruing to the assessee. Likewise, in the case of ***Paragon Constructions (I) (P) Ltd. v. Commissioner of Income Tax and Anr. (supra)***, this Court held that income accrued to the assessee only on the date on which decision was rendered by the Court. To the same effect was the decision of the Kerala High Court in ***N. Sundareswaran (supra)*** that in the absence of any material evidencing the finalization of proceedings and quantification of damages payable by the assessee, the claim for deduction of damages payable cannot be allowed.

11. Referring to the aforesaid judgments, it comes to be an established fact that there would be difference in the statutory interest which is mandatorily payable by virtue of the provisions of statute as in the case of Land Acquisition Act and the interest which may be awarded by an arbitrator in relation to any dispute between the two parties. It also comes out to be an established fact that even if the assessee does not accept the award, as given by the Arbitrator, and challenges the same, the liability of the assessee still remains. But in such a case, it may not be said with certainty as to the amount of liability that may accrue to the assessee. In the



case of **Central India Electric Supply Co.(supra)**, the Supreme Court has held as under:

“The fact that the judgment and the decree of the Civil Court passed on the award was pending consideration in appeal before the High Court was also not a good ground to contend that the price was not due till the litigation with regard to the award was not over. In law the money payable under a decree becomes due for payment on the date of passing of the decree and nonetheless it is so even if the decree is appealed against and there is likelihood of the decree being set aside, modified or confirmed in appeal.”

12. In the present case, it is true that the award was made by the Arbitrator on 15<sup>th</sup> November, 1989 and the same was merged with the award of the appellate authority made on 14<sup>th</sup> September, 1990. This award of the Appellate Authority not only modified the original award dated 15<sup>th</sup> November, 1989 by decreasing the amount of damages and increasing the rate of interest from 10.5% to 11.25%, but made the same payable from 13<sup>th</sup> February, 1981 to the date of award, i.e., 14<sup>th</sup> September, 1990. Till such time the award was not made enforceable and an application for enforcement was filed only on 8<sup>th</sup> July, 1993. It is only with passing of the decree by this Court on 28<sup>th</sup> January, 2000, that the award being made rule of the court, became enforceable. By this decree of 28<sup>th</sup> January, 2000, the assessee was also directed to pay interest at the rate of 18% per annum from the date of award till date



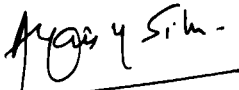
of realization. In fact, it is from this order of the court that the liability of the assessee to pay the interest at the rate of 18% till the date of payment accrued. Prior to this, all that existed was liability of damages and the liability to pay the quantified interest accrued to the assessee only with the award becoming rule of the court on 28<sup>th</sup> January, 2000. The liability on account of interest prior to 28<sup>th</sup> January, 2000 was uncertain inasmuch as it was not certain that court would award interest and if so, at what rate. The court might or might not have awarded interest at all or may not have even made the award as rule of the court. All this was uncertain prior to this order of the court and that being so, on the last date of all the three assessment years in question, there was no accrual of liability and, therefore, the assessee could not claim deduction of the same for the assessment years 1996-97, 1997-98 and 1998-99.

13. In fact the liability on account of interest was to be deductible only when it gets crystallized into a certain liability and that took place only on this court passing a decree and awarding interest after the date of the award till the date of realization. Thus, we are of the view that the liability did not crystallize in the three assessment years 1996-97, 1997-98 and 1998-99, but only came to be crystallized in the year 2000-2001, when



this court passed decree on 28<sup>th</sup> January, 2000 and, therefore, the assessee could not claim deduction for the same in the assessment years 1996-97, 1997-98 and 1998-99. We thus, answer question in affirmative in favour of the Revenue and against the assessee and consequently dismissed the appeal.

  
**M.L.MEHTA**  
**(JUDGE)**

  
**A.K.SIKRI**  
**(JUDGE)**

**JUNE 3 , 2011**

AK/Dev