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

% Date of decision: 04.01.2011

\+ ITA No. 3 of 1999

FRIENDS CLEARING AGENCY (P) LTD. ...APPELLANT

Through: Mr.Alok Krishna Agarwal,
Mr.M.C.Kochhar and
Mr.Mayank Bughani, Advocates.

Versus

COMMISSIONER OF INCOME TAX-II ...RESPONDENT

Through: Mr.Sanjeev Sabharwal Advocate

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE RAJIV SHAKDHER

1. Whether the Reporters of local papers may be allowed to see the judgment? NO
2. To be referred to Reporter or not? NO
3. Whether the judgment should be reported in the Digest? NO

RAJIV SHAKDHER, J. (ORAL)

1. This appeal pertains to the assessment year 1992-93. This Court has been asked to answer the following questions of law:

> "1. Whether on the facts and in the circumstances of the case, the assessee-appellant is entitled to deduction of

> accrued and ascertained liability in respect of the year in question?
>
> 2. Whether on the facts and in the circumstances of the case, the Tribunal is justified in law in upholding disallowance of Rs.50,000/- on estimate basis against a claim of Rs.1,48,782/- being expenses on cartage, labour and sealing expenses and without any material on record against the assessee?"

2. Insofar as the first question is concerned, we feel the following facts are required to be taken note of:

3. The assessee had taken a credit facility from J&K Bank Ltd ('the Bank' for short). On the closing balance of Rs.1,11,40,966/-, the assessee claimed that interest amounting to Rs.16,59,292/- as deduction on accrual basis. The Assessing Officer dis-allowed the interest claimed by the assessee. The CIT (Appeals) confirmed the order of the Assessing Officer. The said order was sustained by the Income Tax Appellate Tribunal ('ITAT' for short).

4. The short ground on which the assessee's claim of deduction of interest on accrual basis was disallowed is that since the Bank, which had loaned the amount, had already instituted a suit, the said claim was not liable to be allowed. In other words, the reasoning appears to be that since interest for the relevant period was neither shown by the assessee in its books of accounts nor by the Bank, the interest stopped accruing and hence, was in the nature of a contingent liability.

5. Mr.Sabharwal appearing for the Department submits that the view of the authorities below has to be sustained on the reasoning given by the authorities below. As a matter of fact, Mr.Sabharwal has drawn our attention to the specific contention raised by the Department, which was, that the interest for the relevant period had not been paid by the assessee nor was it shown in the books of the Bank. Mr.Sabharwal thus contends that in these circumstances, the assessee cannot claim a deduction on the basis of accrual of interest. In the course of arguments and to buttress the aforesaid submission, Mr.Sabharwal referred to the provisions of Section 43B(d) of the Income Tax Act, 1961 ('the said Act' for short). His contention based on this Section was that the liability can be claimed as an expenditure only if it is, firstly, ascertained and secondly, it is paid. He further submits that even if this Court was to come to a conclusion that it is an ascertained liability and not a contingent liability as viewed by the authorities below; since the interest had not been paid, the assessee could not claim a deduction as contended.

5.1 On the other hand, learned counsel for assessee in support of his contention submitted that the deduction of accrued interest ought to be allowed as it was an ascertained liability. The mere fact that the liability is not quantified will not render it contingent.

6. We need not burden ourselves with the reasoning given by the authorities below as in our view this issue has been adequately dealt with by the Supreme Court in the case of Bharat Earth Movers v. Commissioner of Income Tax; 245 ITR 428. The Supreme Court has laid down the law on the subject as follows:

> "The law is settled: if a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied the liability is not a contingent one. The liability is in praesenti though it will be discharged at a future date. It does not make any difference if the future date on which the liability shall have to be discharged is not certain."

7. In our view the mere fact that the Bank had not shown the accrual of interest in its books of accounts would not make the liability contingent. Insofar as the Bank was concerned, it had laid a claim by filing a suit. There is nothing to show that the Bank had not claimed interest for all the three periods i.e. pre-suit, pendente lite and future interest. Learned counsel for the assessee has stated before us that not only has the interest in actuality been paid to the bank but also that no claim has been made on the basis of payment. In other words, the deduction is not claimed

time on the basis of payment. We may also notice that the learned counsel for the Department has not been able to bring to our notice any finding of authorities below that the assessee has not paid the interest for the relevant period.

8. In these circumstances, the question of law is answered in favour of the assessee and against the department. The only caveat, we would like to enter, is that, the Assessing Officer will ascertain the veracity of the statement made before us by the learned counsel for the assessee at the time of final assessment carried for the assessment year 1992-1993.

9. Insofar as the second question is concerned, it involves dis-allowance of expenses to the extent of Rs.50,000/- as against an amount of Rs.1,48,782/- claimed by the assessee. These expenses were claimed by the assessee on account of cartage, labour and sealing expenses. We notice that this claim of the assessee has been dis-allowed throughout. The CIT (Appeals) while dis-allowing a part of the expenses has stated as follows:

> "In the present case, it is also noticed that the assessee has fairly conceded that the part of the expenditure represented the disbursement at the airport representing liaison expenses and gifts etc. The plea of the appellant that the expenditure claim being nominal viewed in the light of the turn over also is not to be convincing because amount and extent of particular expenditure does not determine its character. Therefore, considering the facts of the case in its entirety, I am inclined to agree that part of the expenditure must have been incurred by the

is not possible to accept the entire claim. In my opinion it would be fair and reasonable to restrict the disallowance to Rs.50,000/-"

(emphasis supplied)

10. Having perused the reasoning of the CIT (Appeals) as extracted above and that of ITAT, we are of the view that the said reasoning cannot be sustained. There is no basis for an ad-hoc dis-allowance of Rs.50,000/-. Either it was case that evidence was produced or the evidence was not produced. The basis for deduction of Rs.50,000/- out of a total sum claimed amounting to Rs.1,48,782/- is not clear. Mr.Sabharwal has fairly pointed out the decision in the assessee's case by the ITAT for the assessment year 1989-1990 wherein, the ITAT has allowed similar expenses in totality. As a matter of fact, the ITAT has accepted the case of the assessee that for minor amounts relating to conveyance etc. and other business expenses, it is impractical to have vouchers and that internal vouchers of the staff/employees of an organization will suffice. For the said assessment year, the amount claimed towards expenses was under the similar heads, that is, cartage, labour and sealing expenses.

11. In our view, the ITAT ought to have followed a consistent principle in the subsequent assessment years as well. For this as well as the reasons given above, we find even this question of law ought to be also answered in

12. For the reasons given above, the appeal is allowed.

SANJAY KISHAN KAUL, J.

JANUARY 04, 2011
dm

RAJIV SHAKDHER, J.