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

Decided on 29.11.2012

\+ **ITA 392/2012, C.M. APPL. 11592/2012 & 11593/2012**

\+ **ITA 393/2012, C.M. APPL. 11594/2012 & 11595/2012**

\+ **ITA 403/2012, C.M. APPL. 11602/2012 & 11603/2012**

\+ **ITA 420/2012, C.M. APPL. 11630/2012**

\+ **ITA 428/2012, C.M. APPL. 12332/2012 & 12333/2012**

CIT ..... Appellant

Through : Sh. N.P. Sahni, Sr. Standing Counsel.

versus

DELHI INDUSTRIES & ENTERPRISES ..... Respondent

Through : Sh. Salil Aggarwal, Sh. Anil Sharma, Advocates and Sh. Ravi Pratap Mall, Advocates

CORAM:

MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

1. The Revenue claims to be aggrieved by the common order of the Income Tax Appellate Tribunal (ITAT) dated 31.10.2011 for the Assessment Years 2002-03 and ITA No. 2303/Del/2010 of the Revenue for the

Assessment Year 2005-06. The question of law sought to be urged is as to the:

(a) correctness of the Tribunal's order quashing reassessment proceedings for the assessment years 2004-05 and 2005-06;

(b) correctness of the opinion of the Tribunal in regard to the taxability of the amounts claimed by the assessee as payments made towards interest on borrowed capital for construction of the property in computing the property income;

(c) the legality of the Tribunal's view in respect of the inapplicability of Section 45(4) for assessment year 2004-05.

2. The facts of the case briefly are that the assessee is a firm comprised of two partners which was allotted an industrial plot in Mohan Cooperative Industrial Estate (MCIE), Mathura Road, New Delhi and had constructed a building which was completed in the financial year 2000-01; it started getting rent for that assessment year 2001-02. It had obtained a term loan of Rs.4.33 crores from Canara Bank for 1997-98, for construction on the plot. The loan balance with the bank as on 31.03.2001 was Rs.1.89 crores. Its return of income was processed under Section 143(1) for assessment year 2002-03. Subsequently, under reassessment proceedings, the interest amount claimed for property tax paid were disallowed on the ground that no evidence was forthcoming. A similar approach was adopted for the assessment year 2003-04. The assessee's appeal was allowed by the Commissioner(Appeals) on 14.08.2003. Consequential order was allowed by order dated 27.02.2004, even otherwise subject matter of rectification

proceedings. Finally on 03.05.2006, the Assessing Officer (AO) passed orders. Yet later, on 28.03.2007, notice under Section 148 was issued, proposing to reopen the assessment. The assessee questioned the notice for assessment years 2002-03 and 2003-04, contending that all the materials and the reasoning had been extensively examined and considered in the previous orders, including rectification order and there was no valid "reasons to believe" that could have been recorded by the AO in the case. The assessee's contention on this were further turned down by the ITAT. However, the Tribunal proceeded to consider the merits of the claim for interest.

3. The Tribunal thereafter proceeded to consider the merits of the assessee's claim for deduction under Section 24(6) of the Income Tax Act and in paras 22-24 of its impugned order, allowed the same.

The reasoning of the Tribunal in that regard is as follows:

"23. We have duly considered the rival contentions and gone through the record carefully. The assessee has submitted a statement exhibiting the utilization of current loan taken from Vysya Bank which has been noticed by the Learned CIT(Appeals) and extracted by us in the foregoing paragraphs. The stand of the assessee is that if the balance sheet of the partners and of the assessee are read together then it would reveal that the assessee is not having any other fixed assets on the assets side except this building. In the balance sheet of the partners, they have shown liability towards borrowed funds as well as capital investment in the assessee's firm. The claim of the assessee that partners have borrowed funds, which was utilized by the assessee firm. The grievance of revenue authorities is that there is no need to read all these documents in a harmonious way. The utilization of funds or investment in the construction of the building by the assessee needs not to be explained through the deductive details available in the different balance sheet rather it should produce direct evidence

exhibiting the source of fund and its utilization. Learned CIT(Appeals) has observed that assessee has adopted deductive reasoning for explaining its stand. In our opinion, it does not make any difference as to how one explain its position i.e. by deductive reasoning on inductive reasoning. One method enables the adjudication to arrive at fair conclusion by drawing inference from the maternal available on record. The other methods provide the external aid for the above object. The idea under both the methods to arrive at just conclusion, which is admissible in law. On due consideration of this logic, we are of the view that had these details were available then that would be an ideal situation and there may not be any controversy but can the department put the assessee under tax liability on the ground that why it used the funds borrowed by the partners for the construction purposes or whether the partners as well as the assessee must have used this amount for some other activities. The revenue is unable to collect any evidence demonstrating the other activities. As far as other aspects are concerned, there is no dispute between the department and the assessee. The interest expenses incurred by the assessee on the borrowed funds if sued for the purpose of construction then deduction of such expenses will be admissible to the assessee under Section 24(b) of the Income Tax Act, 1961. The only dispute between the parties relates to the quantification of amounts used for the purpose of construction. On an analysis of the balance sheet, we are of the view that the assessee is able to demonstrate, utilization of funds for the purpose of the construction. Learned revenue authorities without specifying any reason refused to take cognizance of the balance sheet of the partners. In view of the above discussion, we allow this ground of appeal raised by the assessee in all the assessment years and direct the Assessing officer to grant deduction of interest expenses with regard to current interest charges also. The facts in other years are also common. Thus, in view of the above discussion, the grounds of appeal raised by the assessee in all the years are allowed and the solitary ground raised by the revenue in assessment year 2005-06 is rejected."

4. Learned counsel for the Revenue contended that the reasoning of the Tribunal is valid and sought to rely upon the order of the CIT (A), stating, *interalia* that there was no material – as concluded by the AO and confirmed by the CIT(A) - on the record suggesting that the unsecured loans obtained by the assessee or its partners were in fact utilized for payment of loans on the existing Canara Bank liability. In this regard, learned counsel highlighted that a current loan had been obtained from Vysya Bank which was not utilized for the purpose of construction. It was submitted that the reasoning of the Tribunal is not sound as it has not adjudicated on the basis of the relevant material.

5. This Court has considered the submissions. The order of the Tribunal extensively considered the submissions made on behalf of the parties and its reasoning for all the years in respect of the interest claimed for deduction under the head of "interest" is to be found in paras 23 onwards. Earlier para 23 has been extracted. The matter is entirely factual. Since the Tribunal constitutes the final court of fact, nothing new has been brought to the notice of this Court to warrant the conclusion that the inference drawn by the Tribunal on the materials available were unreasonable or perverse. Consequently, question no.2 is answered in favor of the assessee and against the revenue.

6. As regards the correctness of the Tribunal's findings on the reassessment proceedings, there are two Full Bench decisions of this Court (refer *CIT v. Kelvinator of India Ltd.* 2002 (256) ITR 1 (Del) [FB]) *and CIT v. Usha International Ltd.* 2012 (348) ITR 485 (Del*).* In fact *Kelvinator*

(supra) was later confirmed in *CIT v. Kelvinator of India Ltd.* 2010 (320) ITR 561 (SC).

7. In this connection, the Court also notices the recent Full Bench decision in *Usha International Ltd. (supra)* where it was stated as follows:

> *"....The assessee is required to disclose full and true material facts and need not explain and interpret law. Legal inference has to be drawn by the Assessing Officer from the facts disclosed. It is for the Assessing Officer to understand and apply the law. In such cases resort to reassessment proceedings is not permissible but in a given case where an erroneous order prejudicial to the Revenue is passed, option to correct the error is available under Section 263 of the Act.*
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> *XXXXXX XXXXXX XXXXXX*
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> *39. In view of the above observations we must add one caveat. There may be cases where the Assessing Officer does not and may not raise any written query but sill the Assessing Officer in the first round/original proceedings may have examined the subject-matter, claim, etc., because the aspect or question may be too apparent and obvious. To hold that the Assessing Officer in the first round did not examine the question or subject-matter and form an opinion, would be contrary and opposed to normal human conduct. Such cases have to be examined individually. Some matters may require examination of the assessment order or queries raised by the Assessing officer and answers given by the assessee but in other cases, a deeper scrutiny or examination may be necessary. The stand of the Revenue and the assessee would be relevant. Several aspects including papers filed and submitted with the return and during the original proceedings are relevant and material. Sometimes application of mind and formation of opinion can be ascertained and gathered even when no specific question*

or query in writing had been raised by the Assessing Officer. The aspects and questions examined during the course of assessment proceedings itself may indicate that the Assessing Officer must have applied his mind on the entry, claim or deduction, etc. It may be apparent and obvious to hold that the Assessing Officer would not have gone into the said question or applied his mind. However, this would depend upon the facts and circumstances of each case."

8. Having regard to the chequered history of the litigation in the present case, it cannot be argued that the assessee did not make full disclosure or withhold any material particulars. This is specially so in the case of assessment years 2002-03 and 2003-04. What appears to have persuaded the Tribunal to uphold the reassessment proceedings for those years was the circumstance that the assessments were initially completed under Section 143(1). However, such is not the case with the subsequent assessment orders, i.e. 2004-05 and 2005-06. This was done after full application of mind under Section 143(3). In view of these circumstances, we find no infirmity with the order of the Tribunal so far as it held that the reopening of proceedings under Section 147 and 148 was unwarranted for the assessment years 2004-05 and 2005-06.

9. Question No.1 is accordingly answered against the Revenue and in favor of the assessee.

10. As far as Question No.3 – applicability of Section 45(4) is concerned, the Tribunal noticed difference of opinion in the decisions of various High Courts. It also specially recorded that "……*Since parties have not advanced any argument on this aspect, therefore, we do not wish to make any finding. We allow this ground of appeal raised by the assessee and held*

that no capital gain tax would be imposable upon it on account of alleged allegation of distribution of assets."

11. In view of the above and having regard to the previous findings recorded in this judgment as regards the legality of the reassessment proceedings, this Court is of the opinion that the question of law ought not to be gone into in the peculiar circumstances of the case; the same is left open to be decided in an appropriate case. The appeals are accordingly dismissed in view of the above findings.

S.RAVINDRA BHAT
(JUDGE)

R.V. EASWAR
(JUDGE)

NOVEMBER 29,2012