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

Decided on : 04.04.2014

\+ **ITA 129/2014**

THE COMMISSIONER OF INCOME TAX (LTU).....

Appellant

Through : Sh. Sanjeev Sabharwal, Sr. Standing Counsel with Sh. Ruchir Bhatia, Jr. Standing Counsel.

versus

DALMIA BHARAT SUGAR AND INDUSTRIES LTD.

..... Respondent

Through : None.

**CORAM:**
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**
**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)**

**%**

1. In this appeal against the order of the Income Tax Appellant Tribunal (hereafter the "ITAT") dated 27-9-2013 in appeal no. ITA no. 5257/Del/2010, the CIT argues that the ITAT erred in deleting the addition by the Assessing Officer (hereafter the "AO"), of an amount claimed as a deduction in A.Y. 2005-06, even though the expenditure was allegedly incurred in the previous year 1996-97 towards cane price arrears, pursuant to a notification issued in 1997.

2. During the assessment proceeding in respect of returns filed by the assessee, the AO noted that the assessee had debited differential sugar cane price amounting to ₹ 12,08,81,801/-

relevant to previous years 1996-97, 2002-03, 2003-04. The assessee was then asked to show cause why these amounts should not be disallowed as deductions in the A.Y. 2005-06, since they ought to have been claimed in respect of the relevant previous years in which the liability was incurred. The assessee responded that in respect of financial year 1996-97, the Notification dated 15-11-1997, issued to fix cane price was challenged by the company and was consequently first, quashed by the High Court of Allahabad, but later upheld by the Supreme Court by its order dated 4-5-2004. Liability under the notification consequently only arose in 2004. In respect of financial years 2002-03 and 2003-04, it was submitted that the notification imposing liability was only issued during the financial year 2004-05, thus constraining the assessee into claiming the deduction in the A.Y. 2005-06. The AO rejected the assessee's explanation on the ground that the liability had arisen in the financial year 1996-97 itself, since the company was following mercantile system of accounting (by which an expenditure has to be claimed when accrued), and in any event, liability cannot be said to have arisen in 2004 when the Supreme Court upheld the notification. Even in respect of financial years 2002-03 and 2003-04, although the notification was issued in those years by the Government, it was only when the Supreme Court upheld the power to fix price of sugar cane that notifications dated 30-6-2004 and 5-10-2004 were reissued. Consequently, the AO added ₹ 60,20,743/- and the deduction

was reduced accordingly. The Commissioner of Income Tax-Appeals (hereafter referred to as "CIT-A") confirmed the order of the AO. The ITAT, however, allowed the appeal of the assessee, noting that the Allahabad High Court had quashed the notification in 1996 itself, and, therefore, there was no occasion for the assessee to incur liability for payment of arrears till the Supreme Court upheld the Government's power to issue the notification in 2004.

3. In this appeal against the ITAT's order, the CIT only challenges the ITAT's order in respect of previous year 1996-97. The CIT argues that the assessee followed the mercantile system of accounting and thus, it should have shown the expenditure as having occurred when it was incurred, i.e. in financial year 1996-97, regardless of the assessee's challenge of the notification before the High Court. Moreover, since it was an ascertained liability, the expenditure ought to have been provided for in the financial year 1996-97. The assessee, on the other hand, argues that the ITAT's order ought to be confirmed.

4. The law in this regard is settled that a deduction must be claimed when an ascertained legal liability accrues to the assessee, even if the expenditure in discharge of the liability is made much later. See *Kedarnath Jute Manufacturing Co. Ltd. v. CIT*, (1972) 3 SCC 252; *Pope the King Match Factory v. CIT*, [1963] 50 ITR 495, *CIT v. Bharat Carbon and Ribbon Manufacturing Co.* (1999) 6 SCC 434. The only exception to

this principle is Section 43B of the Income Tax Act, which details the limited circumstances in which deductions can be allowed, in the computation of income of the previous year in which the sum was actually paid. In both *Kedarnath* (supra) as well as *Pope the King Match Factory* (*supra*), it was held that since the liability was incurred in the relevant previous year, when the demand by the tax authorities was received, and only the quantum of the demand was under challenge, the deduction ought to have been claimed in the computation of income in the relevant previous year in which the liability was incurred.

5. Concededly, the cane price fixation notification itself was under challenge before the Allahabad High Court and subsequently, on appeal, before the Supreme Court, on the ground that the State Government lacked the power to issue such notification. In other words, the liability to make payment of the price differential itself was under challenge. Thus, there was no clear and ascertained legal liability till the date that the Supreme Court upheld the notification in 4-5-2004, as the Allahabad High Court had quashed the notification on 11-12-1996.Consequently, this Court finds that this expenditure could have been claimed only in the A.Y. 2005-06.

6. This Court also holds that the entitlement of an assessee to a deduction depends on the relevant provision of law and not on the manner of accounting followed by the assessee. See *Kedarnath* (supra). Thus, the question of whether the assessee

followed the mercantile system of accounting or the cash system is immaterial here.

7. For the above reasons, no substantial question of law arises for consideration. The appeal is accordingly dismissed.

**(S. RAVINDRA BHAT)**
**JUDGE**

**(NAJMI WAZIRI)**
**JUDGE**

**APRIL 04,2014**