



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

% Judgment delivered on: 04th February, 2010

+ **ITA 232/2005**

COMMISSIONER OF INCOME TAX Appellant

- versus -

THE BASTI SUGAR MILLS CO. LTD Respondent

Advocates who appeared in this case:

For the Appellant : Ms Prem Lata Bansal
 For the Respondent : Mr Rajeev Dutta, Sr Advocate with
 Mr Sanjeev Kumar Singh

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

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

BADAR DURREZ AHMED, J (ORAL)

The following questions were framed on 18th October, 2005:-

- “(a) Whether the ITAT was correct in law in holding that the issue regarding allowability of interest payable on late deposit of provident fund was a debatable issue and, therefore, could not be disallowed in the intimation issued order Section 143(1)(a) of the Income Tax Act?
- (b) Whether the ITAT was correct in law in holding that deleting the addition made by the Assessing Officer of an amount of Rs 18,02,026/- being interest payable on late deposit of provident fund under



Section 43-B of the Income Tax Act as the same was not paid during the year?”

Insofar as question (a) above is concerned, we find that the issue regarding allowability of interest payable on late deposit of provident fund is a debatable issue. This conclusion of ours is fortified by the fact that the very issue is before us in ITA No.958/2007 in respect of the very year in question namely assessment year 1998-99. ITA No.958/2007 arises out of the regular assessment completed under Section 143(3) of the Income Tax Act, 1961 (in short ‘the said Act). The said question has travelled all the way upto the Tribunal and is now before us in the said ITA No.958/2007 as well as other connected appeals being ITA Nos.965/2007, 1248/2007, 646/2009 and 652/2009. It is, therefore, clear that the issue was debatable and, therefore, could not be disallowed while considering the intimation under Section 143(1)(a) of the said Act.

Consequently, question (a) is decided in favour of the assessee and against the Revenue.

In view of our decision in respect of question (a), question (b) does not survive in this case.

The appeal is dismissed.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

FEBRUARY 04, 2010/dn