

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

% Judgment delivered on: 30.11.2011

+ **ITA 25/2007**

COMMISSIONER OF INCOME TAX Appellant

versus

EAST INDIA SYNTEX LIMITED Respondent

Advocates who appeared in this case:-

For the Appellant : Mr Kanval Sawhney, Sr. Standing Counsel with Mr Amit Srivastava, Advocate

For the Respondent : None.

CORAM:-**HON'BLE MR JUSTICE BADAR DURREZ AHMED****HON'BLE MS JUSTICE VEENA BIRBAL****VEENA BIRBAL, J**

1. This appeal is directed against the Tribunal's order dated 19th May, 2006 for the block assessment period 1.4.1988 to 14.10.1998. The main issue raised is in respect of the deletion by the CIT(A) and the Tribunal of the addition of about ₹ 51.52 lacs made by the Assessing Officer with respect to Capital Assets debited to store consumption. It is also an issue as to whether the question that a particular expenditure is of a Capital or Revenue nature can be a subject matter of block assessment proceedings?



2. The relevant facts are as under:-

The assessee had filed a return for the block period from 1.4.1988 to 14.10.1998. In the said return, undisclosed income of Rs.25 lacs was declared. Notices u/s 143(2) of the Income Tax Act were issued to the assessee on 31.7.2000 and 15.9.2000. The assessee filed its reply as required. The assessee is engaged in the manufacturing and production of polyester viscose Blended Yarn and 100% polyester yarn

3. After considering the material on record, the Assessing Officer made certain additions in the income of the assessee company. The additions made are stated in the appeal. The Assessing Officer thereafter ascertained the undisclosed income of the assessee during the relevant block period and computed tax on it vide order dated 31st October, 2000. The assessee preferred an appeal before the Commissioner of Income Tax (Appeals)-XIV, New Delhi (hereinafter referred to as CIT(A)) against the said order of the Assessing Officer. The order of the Assessing Officer was challenged on various grounds. The CIT(A) deleted all the additions made by the Assessing Officer except the one relating to sale of waste/bogus purchases and remanded the matter back to the Assessing Officer in respect of said addition for deciding afresh after giving opportunity to the assessee vide its order dated 28.02.2001. Aggrieved with the said order, the Revenue preferred an appeal before the Tribunal. All the deletions made by the CIT(A) were challenged before the Tribunal. The Tribunal vide its order dated 19.05.2006 observed that each and every issue has been discussed in detail by CIT(A). The



Tribunal in its impugned order had dealt with the deletions made by the CIT(A) and did not interfere with the decision of CIT(A).

4. Aggrieved with the same, the present appeal is filed. Nine substantial questions of law i.e., para 2 (a) to (i) of the appeal have been proposed in the present appeal.

5. We have gone through the questions stated therein. We are of the view that questions 2(c) onwards stated in the appeal are clearly not questions of law at all. During arguments, the learned counsel for the appellant pressed for questions 2(a) & 2(b) and contended that same are substantial questions of law. The same are as under:-

(a) Whether ITAT was justified in law in deleting the addition of Rs.51.52 lacs made by the Assessing Officer with respect to Capital Assets debited to store consumption?

(b) Whether ITAT was correct in law in holding that the issue as to whether the expenditure is capital or revenue is relevant for the purposes of regular assessment under section 143(3) and cannot be a subject matter of block assessment proceeding?

6. The relevant findings of the Tribunal in this regard are as under:-

“On a careful consideration of the matter, in the light of the submissions made on behalf of the department before us, we are of the view that no interference with the decision of the CIT (A) is called. There is no dispute that the expenditure has been recorded in the books of account for the year ended 31.3.98. Therefore, the return for the AY 1998-99 has been filed in November, 1998. But, it is not in dispute that the entries were made contemporaneously when the expenditure was incurred between September, 1997 and December 1997. Therefore, though the search was in September, 1998, it



cannot be denied that the entries had been made in the books of accounts by that time. This is what the CIT (A) has noted in para 27 of his order by saying that the case of the AO is not that these were not made in the regular books of account. Further, as rightly pointed out by the CIT (A), a debatable question whether the expenditure is capital or revenue in nature cannot form the subject matter of block assessment, though it may be disallowed as capital expenditure in the regular u/s 143(3) if the facts warrant the same. Quite appear from these expenditure of Rs.14.79 lacs on invertors has not been claimed at all as revenue expenditure, but has been capitalized and the entries in the balance sheet support the same. For these reasons, we are of the view that the CIT(A) committed no error in deleting the addition of Rs.51.52 lacs. We uphold his decision and reject the ground.”

7. We have gone through the material on record including the reasoning given by the Tribunal. We are of the view that the finding of the Tribunal cannot be faulted. We are in agreement with the finding of the Tribunal.

8. The questions proposed cannot be termed as substantial questions of law which require our consideration. Accordingly the appeal is dismissed.

VEENA BIRBAL, J

BADAR DURREZ AHMED, J

NOVEMBER 30, 2011

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