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

**Date of Decision: September 25, 2014**

+ **ITA 599/2014 & CM No. 15750/2014**

COMMISSIONER OF INCOME TAX

..... Appellant

Through: Ms.Suruchi Aggarwal,  
Sr.Standing Counsel

Versus

M/S STEEL AUTHORITY OF INDIA LTD.

..... Respondent

Through:

+ **ITA 600/2014**

COMMISSIONER OF INCOME TAX

..... Appellant

Through: Ms.Suruchi Aggarwal,  
Sr.Standing Counsel

versus

M/S STEEL AUTHORITY OF INDIA LTD.

..... Respondent

Through:

**CORAM:  
HON'BLE MR. JUSTICE SANJIV KHANNA  
HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**SANJIV KHANNA, J (ORAL)**



CM No. 15750/2014 in ITA No. 599/2014

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

ITA No. 599/2014

ITA No. 600/2014

These two appeals filed by the revenue under Section 260A of the Income Tax Act, 1961 (Act, in short) relate to the Assessment Years 1999-2000 and 2000-2001.

2. By the common impugned order dated 24.01.2014, Income Tax Appellate Tribunal ('Tribunal', in short), has affirmed the order of the Commissioner of Income Tax (Appeals) ['CIT(A)', in short], deleting penalty levied under Section 271 (1)(c) of the Act amounting to Rs 128.10 lacs for the assessment year 1999-2000 and Rs 19.25 lacs for the assessment year 2000-2001.

3. The respondent assessee, a Public Sector Undertaking during the relevant period operated integrated steel plants and was engaged in activities relating to manufacturing and sale of steel articles etc. The respondent-assessee had shown considerable capitalization of assets on account of expansion and modernization. As installation, erection and commissioning of new machinery involved substantiated gestation time, Interest, relatable to the



borrowings from the date of acquisition to the date of putting the asset to use, were added to the value of the assets and accordingly capitalized. This capitalization of interest became subject matter of audit objections by the Chief Vigilance Commission (CVC, for short) and Comptroller and Auditor General of India (CAG, for short) for the reason that the interest capitalized was higher or more than justified/required. In other words, a part of the interest capitalized should have been claimed as a revenue expenditure. These objections were raised subsequent to the statutory audit and long after filling of tax returns and even assessments for the respective years. In order to comply with and meet the said audit objection, the excess interest was de-capitalized by debiting interest and crediting the assets in the two assessment years. The impact of the said adjustments was reflected in the Profit & Loss a/c as an *"Adjustment relating to an earlier years"*, since the interest related to earlier years, though the decision was taken during the current years.

4. For the assessment year 1999-2000, respondent assessee claimed various deductions including "interest of Rs 366 lacs" being an *"Adjustment relating to an earlier years"*. Likewise for assessment years 2000-2001, respondent assessee claimed various



deductions including "interest of Rs 50 lacs" being an *"Adjustme... relating to an earlier years"*.

5. In the regular assessment proceedings, no disallowance was made, but then, the Assessing Officer found that income had escaped assessment as "adjustment relating to earlier years" had been allowed as a deduction in the assessment years in question. Consequently, notices under section 148 of the Act were issued.

6. In the re-assessment orders, the Assessing Officer held that "interest" claimed (Rs. 366 lacs and Rs. 50 lacs for the assessment years 1999-2000 and 2000-01) pertained to earlier years, and was not related to the years in consideration. Therefore, the said interest claimed in the profit and loss account was disallowed. We are not concerned with the quantum order in these appeals, but with the penalty of Rs. 128 lacs and Rs. 19.25 lacs, for concealment of income, imposed by the Assessing Officer, under section 271(1)(c) of the Act, for furnishing inaccurate particulars of income by claiming prior period expenses.

7. Before we dwell on the appellate orders, we notice with regret, failure of the Assessing Officer to consider the justification



and reasons given by the assessee for making the claim and failure to give notice and consider Explanation 1 to Section 271(1)(c) of the Act. The two penalty orders are identically worded and for the sake of convenience, the entire reasoning given by the Assessing Officer is reproduced below:-

“The AO observed that the claim of the assessee was not admissible as it could not be proved that the liability has been incurred during the year consideration. This issue was confirmed by the CIT(A) also. The interest had been capitalized by the assessee from the date of commencement of production. The C&AG auditors appear to have counted trial production as full production. The interest has, therefore, been de-capitalized based on wrong premises. Moreover, it is not possible to capitalize & de-capitalized in this way. In my opinion, the action of the AO in not allowing the reversal an account of decapitalization was justified. Hence, it is clear that the assessee has claimed capitalized interest on certain Plant & Machinery which was not allowable as per the provisions of the Act. Hence I am satisfied that the assessee had concealed the particulars of income and had also furnished inaccurate particulars of its income and thus committed default within the meaning of explanation 1 to Sec. 271 (1 )(c).”

(The first two sentences in the above quote refers to the orders passed in the quantum proceedings.)

8. Penalty imposed under section 271(1)(c) is a civil liability. The section is enacted as a provision to assist and to vigorously check and prevent loss of revenue, but penalty for concealment can be imposed after noticing and applying the provisions of Section 271 (1)(c) of the



Act including Explanation 1. This is the primary and the basic flaw ...  
the penalty orders passed by the Assessing Officer.

9. The C.I.T (A) by a common order dated 20.5.2013 set aside the penalty and observed that it was a case of wrong interpretation and understanding of the legal and accounting principles. Justification of the assessee should be accepted as bona fide. He observed:-

“After considering the facts of the case and the submissions of the appellant which have sufficient force, I am inclined to hold that the appellant has neither concealed income nor furnished inaccurate particulars for ,AY 1999-2000 and 2000-01. The entries have been passed in the books of account in a bona fide manner and as per the guidelines of the auditors and there is no case for penalty. Hence the penalty of RS.1 ,28,10,000/- and Rs. 19,25,000/- imposed by the Assessing officer is hereby deleted.”

10. The Tribunal has affirmed the said finding, holding that assessee had declared and disclosed full and true material facts in the returns. The Tribunal held:

“4. We have heard rival contentions and perused the material available on record. It has not been disputed that the changes in capitalization or de- capitalization of interest were effected by the assessee consequent to well controlled and regulated statutory regime under the aegis of Central Government. The assessee's book results after statutory audit are subjected to audit and correction of CVC and CAG. The changes carried out by the assessee are in consonance to the recommendations of CVC and CAG. Besides, these details were



filed along with the return of income. All these factors ma... the assessee's case squarely falling within the purview of Supreme Court judgment in the case of Reliance Petroproducts (supra) and other case laws cited by the assessee. On over all consideration of the facts and circumstances, we see no infirmity in the order of CIT(A) deleting these penalties. His orders are upheld”.

11. The appellate orders by the C.I.T (A) and the Tribunal take due notice of the factual matrix and examine the question of bonafides. It stands recorded that the returns filed and income declared was as per the statutory audit report and the interest paid had been capitalized. Subsequently, audit objections that excessive interest had been capitalized, were raised by CVC and CAG. In other words, a part of interest so capitalized should have been treated as revenue expenditure. In order to comply with the said objections, excess interest was decapitalised. This impacted, the profit and loss account for the current years, even when the interest related to earlier years, as the enteries in the profit and loss account and in the books were made in the current years. The de-capitalization was under-taken in the two assessment years and therefore had compressed the profits in the years in question. The reason given was that the decision to de-capitalize was taken in the years in question. On the issue, relating to capitalization and de-



capitalization, the assessee was guided by the opinion of the auditors and consultants. These were certainly accountancy issues, complex and capable of different opinions and understanding at each step.

12. The assessee had given truthful and cogent explanation without concealing or hiding facts why interest relating to earlier years, which was capitalized, had been accounted for as a liability in the current years. It cannot be doubted or even questioned that the assessee had disclosed all facts relating to the explanation offered. Nothing was hidden or concealed. The quantum of interest capitalized and decapitalized as mentioned by the assessee has not been doubted. It is not the case of the revenue that the assessee had tried to wrongly classify or camouflage the “prior period expenses”. On the contrary, the assessee had given full particulars and details in the returns. In the notes of accounts, filed with the original returns, the assessee had prudently and being tentative, mentioned:-

“Normally the erection, installation and commissioning of plant and machinery in our case takes a considerable time - more than one year. The interests incurred on borrowing related to it are capitalized. The capitalization of interest is by debiting capital WIP/Plant & machinery and crediting interest. The company has a number of expansion schemes in progress at any given time. When the plant is commissioned, it is shifted from Capital work in progress (WIP) to plant on the basis of capitalization report. In some cases, the subsequent events



bring out the capitalization of a particular scheme over all... under capitalized on erroneous adjustments between the schemes or on account of an error in date of start or finish or erection, etc. such error are correct when discovered. It has been found in this year ( 1999-2000) that interest of 366 lacs had been excess capitalization in various expansion schemes ( 50 lac in year 2000-2001).

It has thus reduced the capitalization of interest by debiting interest and crediting Plant & Machinery. Since the interest was credited (and capital WIP debited) in the earlier years, the reversal by debiting interest (and crediting P&M) has been shown as an adjustment relating to earlier years. If the department does not accept this reversal then it will have to allow a higher depreciation on Plant & Machinery year after year. Otherwise, the cost WOV of Plant & Machinery cannot be adjusted u/s 43 of the I. T. Act.”

13. The C.I.T (A) in the quantum proceedings against the reassessment order did not entirely agree with the Assessing Officer and held that interest once capitalized cannot be de-capitalised. Thus, depreciation was allowed on the entire interest which had been capitalized without de-capitalization. It is noticeable that the capitalization of the interest in the earlier years was to the detriment of the assessee as it had resulted in higher taxation in the said assessment years. This reflects and indicates bona fides, rather than an attempt or desire to evade taxes. The conduct of the assessee or the adjustment made in the current assessment years were duly



disclosed and informed to the Assessing Officer by way of a note ...  
the original return. The anomaly and error was sought to be corrected and ratified for the future years. This was the justification and reason given.

14. The Tribunal and the CIT (Appeals) after examining the factual matrix and the explanation given by the assessee, have come to the conclusion that the said explanation of the assessee was bona fide. This factual finding is reasonable, plausible and essentially a question of fact. The finding does not require interference and cannot be categorized as perverse.

15. The appeals are accordingly dismissed.

**SANJIV KHANNA, J**

**V. KAMESWAR RAO, J**

**SEPTEMBER 25, 2014/akb**