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

Judgment reserved on : 09.01.2009
% Judgment delivered on : 23.01.2009

ITA No.669/2008

COMMISSIONER OF INCOME TAX ..... Appellant

versus

GUJARAT GUARDIAN LIMITED ..... Respondent

Advocates who appeared in this case:

For the Appellant : Ms. Prem Lata Bansal
For the Respondent : Ms. Kavita Jha

CORAM :-

HON'BLE MR JUSTICE VIKRAMAJIT SEN
HON'BLE MR JUSTICE RAJIV SHAKDHER

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

RAJIV SHAKDHER, J

1. This is an Appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to in short as the 'Act') against the judgment dated 05.10.2007 passed by the Income Tax Appellate Tribunal (hereinafter referred to in short as the 'Tribunal') in ITA No. 3224/Del/2005 in respect of the assessment year 1996-97. Before the Tribunal the Revenue as well as the assessee, filed an appeal against the order of the Commissioner of

Income Tax (Appeals) dated 26.04.2005 [hereinafter referred to in sh... ...

the 'CIT(A)'].

2. The Revenue being aggrieved has preferred the present appeal and proposed the following questions of law for consideration of this Court:-

> "(a) Whether ITAT was correct in law in allowing deduction of export commission of Rs 10,07,22,625/- to the assessee u/s 37(1) of the Act?
>
> (b) Whether order passed by ITAT is perverse in law when it allowed deduction to the assessee of export commission ignoring the relevant facts recorded by the Assessing Officer in the assessment order and contrary to the provisions of Section 40A(2) of the Act?
>
> (c) Whether ITAT was correct in law in allowing depreciation to the assessee on training fee of Rs 2,18,48,700/- paid to Guardian USA, that was capitalized by the assessee as part of Plant & machinery?
>
> (d) Whether ITAT was correct in law in allowing deduction of lump sum prepayment premium of Rs 8 crores paid by the assessee to IDBI?
>
> (e) Whether ITAT was correct in law in allowing entire prepayment premium of Rs 8 crores to the assessee in the instant year or the same was to be spread over the period for which, borrowing was made?
>
> (f) Whether ITAT was correct in law in admitting the additional ground raised by the assessee and thereby directing the Assessing Officer to adjudicate upon the claim for depreciation on enhanced cost of plant & machinery due to exchange rate variation, if claimed by the assessee?
>
> (g) Whether order passed by ITAT is perverse in law and on facts?

2.1 Having heard the learned counsel for both the Revenue, as well as, the assessee, we are of the view that none of the questions proposed are

substantial questions of law which arise for our consideration fo[r the] reasons given hereinafter.

3. In order to deal with the appeal we have set out separately, the essential facts pertaining to each issue raised in the appeal.

Export Commission

4. On 05.06.1990 a collaboration agreement was executed between Guardian International Corporation, USA, (in short 'GIC') Modi Rubber (I) Limited, and Gujarat Alkalies and Chemicals Ltd. Consequent thereto, the assessee was incorporated as a joint venture between GIC, Modi Rubber (I) Limited, M/s Gujarat Mineral Development Corpn. Ltd and Gujarat Alkalies and Chemicals Ltd. GIC with 50% stake in the equity of the assessee was the major shareholder. The State Government through Public Sector Undertakings jointly held a stake equivalent to 9.46% of the total equity of the assessee. It is not disputed that both the purpose and object of entering into the aforementioned collaboration agreement and thereafter incorporation of the assessee, was to manufacture float glass in India.

4.1 The main point to be noted is that in the collaboration agreement of 05.06.1990 it has been provided that the assessee would enter into an export sales agreement with GIC or any of its affiliates which would then act as sole and exclusive agent for sale of float glass manufactured by the

assessee. It was also provided that the said agent would be paid commission at the rate of 5% of the net FOB export price. This, incidentally, at the relevant point in time was the maximum that could be paid as commission.

5. As per the then prevalent regime, the collaboration agreement was filed with the Government of India for approval which was duly accorded; however, with a condition that the assessee would export a minimum of 25% of its total production; failing which, the assessee would be subjected to a penalty.

5.1 It is also not disputed that for the purpose of setting up a plant to manufacture float glass in India, the assessee was also permitted to import machinery into the country under the Export Promotion Capital Goods (EPCG) Scheme at a concessional rate of duty. Under the EPCG Scheme it was stipulated that in the event the assessee failed to fulfill the export application undertaken by it, it would be required to pay the differential duty along with interest.

6. It is in this background that the assessee set up its plant which commenced commercial production on 01.03.1993.

7. At this stage it would be important to note two other aspects on which the Assessing Officer, as well as the Revenue, have laid great stress, which is, that as per the collaboration agreement dated 05.06.1990

the assessee was required to pay royalty to GIC at the rate of 3% on domestic sales and 4% on foreign sales. It seems that the financial institutions in India had an objection to the clause on payment of Royalty, which stood incorporated in the collaboration agreement. The financial institutions were of the view that the obligation of the assessee to pay royalty to GIC must necessarily be subordinate to its obligation to pay instalments, interest and other charges under the loan agreements executed by the assessee with the financial institutions. In order to meet the concerns of the financial institutions the assessee gave an undertaking on the aforementioned broad terms vide letter dated 27.02.1993, which *inter alia*, subordinated the interest of GIC, with respect to, its right to receive royalty to that of, the financial Institutions right to receive their dues under the loan agreements.

8. On 20.07.1993, the assessee entered into an Export Sales Agency, with one, Guardian Glass Exports Limited (in short 'GGE') an affiliate of GIC. The said Export Sales Agency Agreement provided for payment of commission to GGE at the rate of 12.5% of the net FOB export price as against 5%, as indicated above, in the collaboration agreement of 05.06.1990.

8.1 Accordingly, the assessee filed its return for the assessment year 1996-97 on 29.11.1996 in which it claimed the commission paid to GGE at the rate of 12.5% as deductible expenditure.

2009:DHC:240-DB

8.2 The Assessing Officer had selected the case of assessee for scrutiny. A notice under Section 143(2) of the Act was issued. The Assessing Officer after seeking the response to his queries disallowed the deduction in entirety on the following broad grounds:-

(a) payment of commission at the rate of 12.5% to GGE which was the affiliate of the foreign collaborator i.e., GIC did not seem prudent as the exports were made at a price less than the cost of production. In other words, the assessee in exporting its goods had incurred a loss;

(b) there was no evidence of the agent i.e., GGE having rendered service;

(c) the arrangement with GGE for payment of commission at an enhanced rate of 12.5% was in reality a ruse to compensate the foreign collaborator i.e., GIC towards loss of royalty, payment of which was impeded, on account of assessee's undertaking given to financial institutions.

9. The assessee being aggrieved had preferred an appeal to the CIT(A). The CIT(A) partially allowed the appeal of the assessee, inasmuch as, she allowed the claim towards payment of commission to the extent of 5%. Balance commission at the rate of 6.5% was disallowed. The CIT(A), in her order held that, in respect of, the first objection of the Assessing Officer that the assessee in exporting the goods was incurring a loss: observed that, in view of the explanation of the assessee, that the exports had to be made at the price prevailing in the international market even if it

was less than the cost of production keeping in mind that the domestic demand for float glass in the country was low and the inventory with the assessee was piling, the said objection had no merit. As regards the second objection of the Assessing Officer that GGE had not rendered any service the CIT(A) noted; the fact that the collaboration agreement which was executed prior in point of time to the Export Sales Agency Agreement, itself provided for appointment of an agent for the purposes of carrying out exports. The agent under the collaboration agreement could have been the foreign collaborator itself i.e., GIC or any of its affiliates. The said foreign collaboration agreement also provided for payment of commission to such an agent albeit at the rate of 5% which had the approval of Government of India. The CIT(A) also returned a finding that there had been a promotion of exports which was amply demonstrated by the fact that the assessee had achieved an export turnover of Rs 90 crores; the details with respect to which had been supplied by the assessee. The CIT(A) was thus of the view that there was no justification for disallowance of the entire commission, however, she restricted the allowable agency commission to the rate of 5%. The CIT(A) was of the view that assessee had failed to establish by adverting to evidence that payment of commission at the rate of 12.5% is reasonable. In this regard the CIT(A) sustained the view of the Assessing Officer, insofar as, he had taken resort to Section 40A(2) and Section 92 of the Act to the extent of

restricting the commission to 5% as against 12.5% claimed by the assessee.

10. Aggrieved by the above, the assessee preferred an appeal to the Tribunal. The Tribunal in paragraph 21 of the impugned judgment has adverted to evidence before it, which suggests clearly that services were rendered by GGE. It is pointedly observed that the assessee took advantage of the huge marketing network of GIC in 40 countries across the globe for the purposes of carrying out exports. The Tribunal in this regard has referred to invoices, the list of customers to whom exports sales had been made during the year, the correspondence between the assessee and various sales agents of the GIC shipping bills, realization certificate of export products and as also the realization certificate issued by the bank, wherein the payment of export commission is duly reflected. Based on appreciation of the said documentary evidence, on record, the Tribunal came to the conclusion that there was sufficient evidence before the Assessing Officer regarding services rendered by GGE to the assessee which justified payment of commission. As regards the other related issue as to whether the claim of the assessee towards payment of agency commission should be restricted to 5% as held by the CIT(A), the Tribunal after noting the submissions of the assessee in paragraph 23 of the impugned judgment came to the conclusion that once it is held that services had been rendered by the agent the quantum of commission that

has to be paid is purely the discretion of the assessee over which the Revenue cannot sit on judgment. The Tribunal, therefore, found no basis to restrict the claim of commission to 5%.

10.1 The Tribunal also rejected the contention of the Revenue and to that extent disagreed with the conclusion of CIT(A) as well, that the provisions of Section 40A(2) or Section 92 of the Act could be brought into play to restrict the claim of the assessee towards payment of agency commission at the rate of 5% on the ground that the same was excessive and unreasonable. It came to the conclusion that Section 40A(2) should be invoked only if the Revenue is able to establish that the expenditure in issue was excessive or unreasonable having regard to fair market value of the goods and services or facilities for which payment has been made or the legitimate needs of the business or provision of services or benefit derived by or accruing to the assessee from the said expenditure. In view of the fact that the Tribunal found that no evidence was placed by the Revenue as to what was the fair market value of the goods for which the assessee had paid commission, the claim of the assessee could not be restricted by resorting to the clause in the collaboration agreement in which the agency commission had been pegged at 5%, by treating the same as evidence of fair market value. The Tribunal also observed that Section 92 of the Act could not be invoked in the instant case as the Transfer Pricing Officer in assessment years 2002-03, 2003-04 and

2004-05 had accepted that the percentage of the commission paid by the assessee as one at arms length price. The Tribunal was thus, of the view that, the provisions of Section 92 were not attracted in the instant case. It thus concluded that there was no justification in restricting the allowance of commission to 5% by invoking the provisions of Section 40A(2) or Section 92 of the Act.

11. Having perused the orders of the Tribunal, we do not find that findings returned on the said issue are perverse. The point to be noted is that the Assessing Officer in respect of the present issue was largely swayed by the fact that in order to get over the impediment created by the financial institutions with respect to the payment of royalty, by seeking an undertaking from the assessee that royalty will not be paid till such time the assessee's obligation to make payments towards principal, interest and other charges under the loan agreement are irregular, was sought to be circumvented by entering into an Export Agency Sales Agreement in July, 1993 by enhancing the agency commission from 5% to 12.5%. As has been rightly noted by the CIT(A), as well as, the Tribunal in the collaboration agreement dated 05.06.1990, there was a subsisting provision for appointment of an agent, to facilitate exports by the assessee. The agent as per the collaboration agreement could have been either the foreign collaborator itself i.e., GIC or its affiliate. Furthermore, the collaboration agreement provided for payment of agency commission at

2009:DHC:240-DB

the rate of 5%. Therefore, it is quite evident that the appointment of the agent by itself was not a device. The reasons given for enhancement of commission by the assessee, were broadly: that there was very little demand for float glass, at the relevant point in time, in the domestic market and hence, in order to recoup its losses the assessee chose to export the goods even though at a price which was less than the cost of production. In achieving this end the agent extended its assistance in various ways which the assessee in its wisdom felt ought to be compensated by enhancing the rate of commission are reasons which were accepted by the Tribunal on examination of evidence which demonstrated increase in export sales. Therefore, the Tribunal, in our view, rightly, disagreed with the conclusion of the CIT(A), which is, that while the assessee's stand that services had been rendered, was acceptable, however, in so far as the rate of commission was concerned it was to be allowed only to the extent 5%. The Tribunal's dis-agreement with this line of reasoning adopted by the CIT(A), was broadly on the ground, that once it is accepted that services have been rendered by the agent the discretion as to what commission has to be paid is a business decision of the assessee which cannot be interfered with unless there is evidence to show that it is unreasonable is, in our opinion the correct approach.

11.1 The Tribunal in the impugned judgment has returned a finding of that no evidence had been produced by the Revenue that the agency

commission paid by the assessee at the rate of 12.5% was unreasonable. The Tribunal also noted that the Transfer Pricing Officer in the assessment years 2002-03, 2003-04, 2004-05 had accepted the percentage of agency commission paid by the assessee confirmed to the arms length price.

11.2 In view of the aforesaid findings and the reasoning adopted by the Tribunal, we find no fault with the conclusion arrived at by the Tribunal in the impugned judgment, which is, that there was no justification on the part of the CIT(A) in disallowing the claim of the assessee towards payment of commission over and above the rate of 5% by invoking Section 40A(2) or Section 92 of the Act. We concur with the view of the Tribunal. According to us no substantial question of law arises for our consideration.

Training Fee

12. As regards this issue in the assessment order it is noted that: the assessee in its return had claimed expenses towards training fee of its personnel under the personnel agreement dated 04.12.1990, even though in the balance sheet it had been shown as deferred revenue expenditure. It is not disputed that the assessee's personnel underwent training as per the terms of the personnel agreement dated 04.12.1990 executed between GIC and the assessee company at various locations between 12.09.1991 and 16.12.1992. The assessee's personnel were given training in the areas

pertaining to production, engineering, quality control and research and development with regard to various areas dealing with glass forming, glass melting, glass cutting and operation and maintenance of various aspects of production and research. This training was, admittedly, imparted to the personnel before the plant was set up. The assessee, admittedly, maintained its books of accounts on mercantile basis. In this background the assessee's claim for training fee in the previous year relevant to the assessment year 1996-97 was disallowed by the Assessing Officer broadly on the following grounds:-

(i) the services for which expenses have been incurred were rendered in the earlier years and hence, the liability for payment of services also arose in the years prior to the assessment year under consideration; and

(ii) the expenditure was in the nature of pre-operative expense and had to be capitalised. It is important to note that the Assessing Officer while holding that the expenses for training fee had to be capitalized did not allow the assessee depreciation in respect of the same in view of the fact that the assessee, according to the Assessing Officer, had failed to establish a nexus with the assets in respect of which the expenses had been incurred.

12.1 The assessee being aggrieved had preferred an appeal to the CIT(A), in respect of, this issue as well. The CIT(A) agreed with the reasoning given by the Assessing Officer. The assessee took the matter further, in appeal, to the Tribunal. The Tribunal in paragraph 28 of the impugned order observed, and in our view rightly, that the item of expenditure in question was admittedly incurred prior to the setting up of the plant and, therefore, had to be capitalized as part of plant and machinery. The Tribunal observed, the fact that, the payment had been made during the previous year or that tax at source had been deducted during the previous year would not convert a capital expenditure into one which is revenue in nature. It further observed that the provisions of Section 40(a)(i) are provisions which enable the Revenue to make a disallowance. The assessee cannot seek to rely on those provisions when the item of expenditure was admittedly a capital expenditure. The Tribunal thus permitted the training fee to be capitalized as part of plant and machinery with depreciation to be allowed to the assessee on the said capitalized amount.

12.2 We agree with the line of reasoning adopted by the Tribunal. It is well settled that pre-operative expenses incurred for setting up of a plant are to be capitalized. See observations in ***Challapalli Sugar Ltd vs CIT; (1975) 98 ITR 167 at pages 174-175***. Thus, in our view, no substantial question of law arises for our consideration.

<u>Depreciation on adjusted cost of asset</u>

13. This issue pertains to liberty granted to the assessee to make his claim before the Assessing Officer for allowance of depreciation in terms of Section 43A of the Act by taking into account the rate of exchange at the year-end vis-a-vis, the rate of exchange prevailing at the time the asset was purchased/loan was obtained in foreign currency. In other words, the assessee was given liberty by the Tribunal to lay claim for depreciation on the cost of assets adjusted for fluctuation in the rate of exchange of foreign currency.

13.1 We find upon perusal of paragraph 33 of the impugned judgment that the assessee had not claimed any depreciation. It was only during the course of hearing of the appeal before the CIT(A) in respect of assessment year 1996-97 that the Assessing Officer vide letter dated 28.03.2000 made a request that depreciation be allowed to the assessee. On receiving a copy of the said letter of the Assessing Officer the assessee vide his letter dated 11.05.2000 in the first instance objected to the depreciation being thrust on him in the absence of claim made by it in this regard. However, subsequently by a letter dated 28.10.2003 the assessee withdrew his objection and accepted the contention of the Assessing Officer that he be allowed depreciation. It seems that the CIT(A) disposed of the appeal

pertaining to the assessment year 1996-97 without adverting to this aspect of the matter. This propelled the assessee to file an application under Section 154 of the Act before the CIT(A), wherein he averred that failure on the part of the Assessing Officer to deal with the stand taken by him with regard to depreciation would constitute a mistake apparent on the face of the record. From the order of the Tribunal it is noted that the said application under Section 154 is pending. We have not been told otherwise, that is, that the position with regard to pendency of the said application has changed since then. It is in this background in paragraph 34 of the impugned judgment that assessee's claim for depreciation was allowed. The Revenue in the present appeal has not raised any objection to the direction of the Tribunal allowing depreciation to the assessee. Upon perusal of the proposed question of law which is extracted hereinabove it seems that the Revenue is aggrieved by the fact that the Tribunal admitted the additional ground raised by the assessee pertaining to claim of depreciation on actual cost of assets after they were adjusted for fluctuation in the rate of exchange, in terms of Section 43A of the Act. A bare perusal of paragraph 36 of the impugned judgment would show that the Tribunal as a matter of fact rejected the application of the assessee raising the additional ground for the reason that it did not arose out of the order of the CIT(A). All that the Tribunal has done is that, it has granted liberty to the assessee, to make its claim before the Assessing Officer who

has been permitted to adjudicate upon the same in accordance with law. According to us this direction of the Tribunal cannot be found fault with. No substantial question of law has arisen for our consideration.

Pre-payment premium

14. Briefly, the assessee in its profit and loss account has debited a sum of Rs 8 crores as pre-payment premium which is classified as an extraordinary item. The Assessing Officer sought justification from the assessee for claiming the entire amount as deduction in the previous year relevant to the assessment year under consideration in view of the judgment of the Supreme Court in the case of ***Madras Industrial Investment Corporation Ltd vs CIT; (1997) 225 ITR 802.*** The Assessee responded to the query of the Assessing Officer by submitting that it had made a proposal to IDBI for restructuring its debt with respect to rupee term loan aggregating to Rs 170.76 crores. The IDBI vide letter dated 19.03.1995 agreed to the proposal and *inter alia* reduced the rate of interest on the rupee term loan to 15% p.a. effective from 01.04.1995 upon the assessee paying IDBI a lump sum pre-payment premium of Rs 8 crores.

15. It is not disputed that the said pre-payment premium of Rs 8 crores has been paid by the assessee during the previous year relevant to the assessment year under consideration and accordingly debited to the profit

and loss account. The assessee, thus, claimed the aforementioned pre-payment premium as a business expenditure. The assessee has justified the same on the ground that it represented nothing but up-front payment, that is, present value of the differential rate of interest that would have been due on loan if no restructuring of loan had taken place. The assessee also justified the claim on the basis of the provisions of Section 43B(d) of the Act which, *inter alia*, provides for deduction of interest payable to public financial institutions only in the year in which the same is paid, as against the year, in which, the liability to pay the same was incurred according to the method of accounting followed by the assessee. It was, thus, submitted that since the assessee had made the payment during the previous year relevant to the assessment year 1996-97, that is, the assessment year under consideration, the same was admissible as deduction in terms of Section 43B(d) of the Act.

15.1 The Assessing Officer relied upon the judgment of the Supreme Court in the case of ***Madras Industrial Investment Corporation*** *(supra)* and directed that the pre-payment premium of Rs 8 crores be amortized over a period of 10 years. Accordingly, the Assessing Officer allowed the deduction of Rs 80 lakhs in the year under consideration.

15.2 The assessee being aggrieved had carried the matter in appeal to the CIT(A). The CIT(A) very curiously, while noting that the facts in ***Madras Industrial Corporation*** *(supra)* were not identical to the ones that

obtained in the present case held that, the principle of law laid do... ... ***Madras Industrial Corporation*** *(supra)* is applicable to the present case and hence, did not find any error in the approach of the Assessing Officer in relying upon the said decision. The assessee carried the matter further, in appeal, to the Tribunal. The Tribunal in paragraph 31 of the impugned judgment has returned a finding of fact that the pre-payment premium paid by the assessee, in lieu of which IDBI reduced the rate of interest on the rupee term loan, represented present value of the differential rate of interest that would have been due had no restructuring of the loan had taken place. The relevant observations of the Tribunal are extracted hereinbelow:-

> *"The prepayment premium paid by the assessee to IDBI is in lieu of IDBI agreeing to reduce the rate of interest on the rupee* ***loan aggregating to Rs 170.76 crores. The same, in other words, represents upfront payment (present value) of differential rate of interest that would have been due on the loan if no restructuring of the debt had taken place.*** *In terms of S. 36(1)(ii) read with S. 2(28A) of the Act pre payment charges being interest paid on moneys borrowed for purposes of business, is to be allowed deduction as revenue expenditure. The prepayment premium being revenue expenditure, is to be allowed deduction in the year of accrual thereof, since the Act does not recognize the concept of deferred revenue expenditure."*

16. Furthermore, the Tribunal also accepted the plea of the assessee that it was entitled to claim deduction under Section 43B(d) of the Act and based its decision on the judgment delivered by its Chennai Bench in the case ***Overseas Sanmar Financial Ltd vs JCIT; (2003) 86 ITD 602***.

17. In view of the fact that the Tribunal has returned a finding th... ... lump sum pre-payment premium of Rs 8 crores represented the present value of the differential rate of interest that would have been payable by the assessee if no re-structuring of loan had taken place, then in terms of Section 36(1)(ii) read with Section 2(28A) of the Act the assessee's claim for deduction had to be allowed. The question then is whether the deduction towards interest be allowed in one lump sum as claimed by the assessee or deferred over a period of time as sought to be done by the Revenue.

17.1 According to us, as correctly held by the Tribunal, the assessee's claim for deduction had to be allowed, in one lump sum, keeping in view the provisions of Section 43B(d) which provides that any sum payable by the assessee as interest on any loan or borrowing from any financial institution shall be allowed to the assessee in the year in which the same is paid irrespective of the provisions in which the liability to pay such sum is incurred by the assessee according to the method of accounting regularly applied by the assessee. Since the authorities below have not disputed that pre-payment premium paid to IDBI, in the instant case, is nothing but 'interest' or that it was paid to a public financial institution i.e., IDBI then, in terms of, Section 43B(d) the assessee's claim for deduction could only have been allowed in the year in which the payment had actually been made. It is not disputed that payment has been made in the previous year

relevant to the assessment year under consideration i.e., assessment year 1996-97. Therefore, there is no scope for spreading over the liability over a period of 10 years as was sought to be done by the Assessing Officer which was, according to us, erroneously sustained by the CIT(A). The ratio of the judgment of the Supreme Court in the case of ***Madras Industrial Corporation*** *(supra)* is not applicable to the present case. The facts of the instant case are different. ***Madras Industrial Corporation*** *(supra)* pertains to treatment of discount on debenture issued by the assessee. The Supreme Court's observations that a claim for deduction by an assessee be spread over as deduction in one year would distort the picture of profits, cannot be applied to the instant case, as the mechanism for claiming deduction on account of 'interest' paid on loans obtained by the assessee from a public financial institution, is specifically provided for in the statute under Section 43B(d) of the Act. Therefore, in terms of Section 43B(d) once it is ascertained that the payment is in the nature of 'interest' in terms of Section 36(1)(iii) read with Section 2(28A) of the Act, and the assessee fulfills the conditions provided in Section 43B(d), that is, it is the interest paid in respect of loans obtained from public institutions, it follows that, the interest will have to be allowed as a deduction only in the year of payment, notwithstanding the fact that, the liability to pay such sum was incurred in an earlier year based on the method of accounting regularly employed by the assessee. In these

circumstances, in our opinion the Assessing Officer failed to appr... the ratio of the judgment of the Supreme Court in ***Madras Industrial Corporation*** *(supra),* which is, really an application of the principle of accountancy of matching income with expenditure, where the Act makes no specific provision for claim of deduction. The said principle enunciated by the Supreme Court was not contemplated to apply to situations where the Act makes a distinct and specific provision. See Observations made by the Supreme Court in ***Tuticorin Alkali Chemicals v. CIT; (1997) 227 ITR 172 at pages 183-184***. In the result, no fault can be found with the approach of the Tribunal in respect of this issue.

18. The Tribunal has returned pure findings of fact which are not perverse. As discussed above none of the issues raise a substantial question of law. In the result, the appeal is dismissed. The parties to bear their own costs.

RAJIV SHAKDHER, J

VIKRAMAJIT SEN, J

January 23, 2009
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