

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

I.T.A. No.55 of 2013

Date of Decision:23.05.2013

Commissioner of Income Tax-I, LudhianaAppellant

Vs.

M/s Vardhman Polytex Ltd., ChandigarhRespondent

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mr. Rajesh Katoch, Advocate for the appellant.

HEMANT GUPTA, J.(Oral)

The present appeal under Section 260-A of the Income Tax Act, 1961 arises out of an order dated 17.9.2012 passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'B', Chandigarh (for short, 'the Tribunal') in respect of assessment year 1998-99.

The Revenue has claimed the following substantial questions of law:-

- “i) Whether, on the facts and circumstances of the case, the Hon'ble ITAT was right in law in quashing the order of the Ld. CIT (Appeals), ignoring the judgment of Challapalli Sugar Ltd. & Anr. v. Commissioner of Income Tax, A.P and Anr. (1975) 98 ITR 167, in which the Hon'ble Supreme Court has clearly brought out the fact that if the expenditure of interest has been incurred for the business which is already running than the same has to be allowed as revenue expenditure but if the business is yet to start then the interest expenditure has to be capitalized. Which is so in the case of the assessee, as the assessee has paid the interest on borrowed capital for establishing new unit at Baddi?”
- ii) Whether the interest on borrowed funds used for setting up a new unit at Baddi before the asset was put to use should be capitalized u/s 36(1)(iii) of the I.T. Act, 1961 or allowed as

revenue expenditure?”

- iii) Whether, on the facts and circumstances of the case, the Hon'ble ITAT was right in law in quashing the order of the Ld. CIT (Appeals), on the basis of the decision of DCIT vs. Core Health Core Pvt. Ltd. 298 ITR 194 which is not applicable in the case of assessee but the decision of the Hon'ble Supreme Court in the case of Challapalli Sugars Ltd. stands is applicable in this case?”

The assessee has claimed payment of interest as revenue expenditure whereas the Assessing Officer found that such interest has to be capitalized in view of the judgment of jurisdictional High Court since reported as Commissioner of Income Tax Vs. Vardhman Polytex Ltd. (2008) 299 ITR 152. However, the said judgment of this Court has been set aside by Hon'ble the Supreme Court when the Civil Appeal No.6438 of 2012 titled 'M/s Vardhman Polytex Limited, Ludhiana Vs. Commissioner of Income Tax' was allowed on 12.09.2012 relying upon its earlier judgment reported as Deputy Commissioner of Income Tax Vs. Core Health Care Limited (2008) 298 ITR 194.

The Tribunal has decided the appeal in favour of the assessee relying upon the judgment of the Supreme Court, the basis of the order setting aside the judgment of this Court. In view of the judgment of Hon'ble the Supreme Court, we do not find that the questions of law as framed by the revenue arise for consideration by this Court.

Consequently, the present appeal is dismissed.

**(HEMANT GUPTA)
JUDGE**

May 23, 2013
renu/Vimal

**(RITU BAHRI)
JUDGE**