

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

**11.08.2009**

**Present: Mr. N.P.Sahni and Mr. P.C.Yadav, Advocate for the appellant**

**Mr. S.K.Aggarwal, Advocate for the respondent.**

**I.T.A.No. 104/2009 DCMLTD**

The Assessing Officer had assessed the income of the assessee herein in respect of Assessment Year 1997-1998. In that year, the assessee had also claimed deduction in respect of payment of notional value of interest of Rs. 5.27crores paid by it on funds borrowed from the banks. The assessment order was passed under Section 143(3) of the Income Tax Act on 24.3.2000. However, thereafter, the AO reopened the assessment by exercising power under Section 147 and 148 of the Income Tax Act. Admittedly, this step was taken after the lapse of four years from a date of assessment year. For reopening of the case, following reasons were recorded: ?It was noticed that the assessee co. has given interest free advance totaling to Rs.36.95 crores to its subsidiaries and trust including Rs.15.15 Crores to M/s Unified Holding Ltd. the assessee co. has claimed interest of Rs.80.83 Crores on the borrowings made from banks, financial institutions and other parties. In the subsequent year i.e. A.Y.1998-99 out of the total claim of interest of Rs.68cr. The Ld. CIT(A) deleted the addition but the department has filed an appeal before the ITAT against the order of the CIT(A) on this issue. Since, the issue is involved in A.Y.1997-98 also the income to the tune of Rs.5.27 Crores by way allowing interest claimed on borrowings has escaped assessment.?

It is clear from the above fact that the AO nowhere recorded that the assessee had not given full information or had concealed any facts. The CIT(A), reversed the aforesaid order of the AO and the ITAT, in further appeal, has upheld the orders of the CIT(A). We find from the orders of the Income Tax Appellate Tribunal that the Tribunal has opined that in the reasons recorded for reopening, has nowhere referred to any material which had come in the possession of the AO after passing of the original order. The Tribunal was also of the

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view that since there was no change in the factual position as the loans were advanced in the original years as well as on fresh loans advanced in this year by the assessee co., AO had initially given the same treatment. In these

circumstances, the I.T.A.T has relied upon the judgment of Hon'ble Supreme Court in the case of S.A.Builders Ltd. Vs. CIT, 288 ITR 1(SC). Following observations in this behalf need to be noted:

We may also observe that the loans were advanced in the earlier years and on fresh loan was advanced in this year. Therefore, the factual position is not changed in this year. The issue regarding disallowance of interest was considered by the Hon'ble Supreme Court in the case of S.A.Builders Ltd. Vs. CIT, 288 ITR 1(SC). In that case the Hon'ble Supreme Court has held that no disallowance of interest should be made where interest free loans are given to a sister concern as matter of commercial expediency. It is noticed that in past there had been no disallowance by the A.O. on this count and therefore, there was no reason for the Assessing Officer to take a different view in the present assessment year.?

It is also not in dispute that in identical manner assessment was reopened for the assessment year 1996-1997 and which was set aside by the CIT(A) and confirmed by the ITAT and against an order of the ITAT, this court has also dismissed the appeal of the Revenue (ITA 823/2008) vide order dated 1.8.2008. We are, therefore, of the opinion that no substantial question of law arises.

Dismissed.

A.K.SIKRI, J

VALMIKI J.MEHTA, J

August 11, 2009