

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

+ **ITA No.ITA 985/2010
&
ITA NO.1316/2010**

% Date of order:13th December, 2010.

(1) ITA No.ITA 985/2010 & CM APPL. 13061/2010

THE COMMISSIONER OF INCOME TAX . . . APPELLANT

Through : Ms. Prem Lata Bansal,
Advocate

VERSUS

M/S TAJ INTERNATIONAL JEWELLERSRESPONDENT

Through: Mr. S. Krishnan, Advocate

(2) ITA NO.1316/2010

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CORAM :-

**HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE SURESH KAIT**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

1. The assessee herein is in the business of export of jewellery. In these two assessment years namely 2005-06 and 2006-07, it was found by the Assessing Officer that the assessee had taken a huge

amount as loan on which interest was paid. It was also found that the assessee had converted the said loans in the FDRs and interest was received on the said FDRs. It so happened that the interest earned on the FDRs was more than the interest which the assessee paid on the loans. The assessee had shown the interest earned on FDRs as 'income from other sources'. However, at the same time, the interest which was paid by the assessee to the bank on the loans was reduced from the interest earned on the FDRs. In this manner, netting of the interest was done by the assessee and the income shown under the head 'income from other sources'. The Assessing Officer, however, disallowed the interest paid by the assessee to the banks on the borrowed amount on the ground that the loan was borrowed for business purpose and interest paid thereon should not be netted against the interest earned on the FDRs but should be allowed as deduction while computing the income from the head of 'income from business'. The assessee filed an appeal against this order before the CIT (A) which deleted the addition and allowed the deduction of interest paid by the assessee to the bank on the borrowed funds under Section 57 (iii) of the Income-Tax Act. This order of the CIT (A) has been affirmed by the Tribunal.

2. In order to deal with this issue one will have to go in the peculiar nature of transaction entered into by the assessee. The assessee had given its detailed explanation to the Assessing Officer, *inter alia*, stating that it had borrowed a sum of ₹ 35.34 crores directly from the banks to make the FDRs i.e. to say on the one hand, Bank advanced loan to the assessee and on the other hand, the same amount was converted into FDR's. The assessee had further explained that it did not invest fresh capital in the years in question. More so, the activity of import of gold

on 360 days credit against letter of credit was permitted by the Government of India as per Import & Export Policy for the benefit of Exporters. The Exporters were benefitted by scheme purely on the facts that there was a difference of rate of interest in India as against interest rate outside India which was payable i.e. LIBOR rate (London Inter Bank Rate). It was because of this peculiar nature of the transaction and the scheme of Government of India for the benefit of Exporters that the assessee earned more interest on the FDRs than the interest payable to the bank on the borrowed funds. It is not in dispute that the assessee intends to pay the tax on the extra interest earned on the said FDRs, what the assessee wanted to adjust there from the interest paid by it to the Bank against the borrowed funds. Section 57 (iii) of the Act reads as under:-

“any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income”

3. The CIT (A) as well as ITAT have recorded a finding of fact that there was a clear nexus between the interest earned on the FDRs and the interest paid on loans utilized for purchase of FDRs and the intimate connection between the receipt and payment of interest stand established. It is not in dispute that the entire money was borrowed with the sole purpose of converting the same into FDRs and that was actually done as well. In these circumstances, we are agree with the opinion of the authorities below. The interest paid had to be allowed under the provisions of Section 57 (iii) of the Act as the amount was

borrowed for making and earning income, taking advantage of the EXIM policy of the Government of India as well as lower LIBOR interest rate.

4. Therefore, we are of the view that no substantial question of law arises in the aforesaid background and these appeals are accordingly dismissed.

A.K. SIKRI, J.

SURESH KAIT, J.

DECEMBER 13, 2010

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