

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**INCOME-TAX REFERENCE NO.345 OF 1995.**

**APPLICANT:** M/s Dipti Textile Industries,  
Court House, 4<sup>th</sup> Floor, Dhobi  
Talao, Bombay – 2.

**-VERSUS -**

**RESPONDENT:** The Commissioner of Income – Tax.  
Bombay City – VI, Bombay.

**INCOME-TAX REFERENCE NO.347 OF 1995.**

**APPLICANT:** M/s Nina Textile Industries Ltd,  
Court House, Tilak Marg,  
Dhobi Talao, Bombay – 400 002.

**-VERSUS -**

**RESPONDENT:** The Commissioner of Income – Tax.  
Bombay City – VI, Bombay.

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Mr.J.D.Mistry, Advocate for the applicants.  
Mr.Vimal Gupta Adv. for the respondent.  
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**Coram: V.C.DAGA and J.P.DEVADHAR , JJ.**  
**Dated : 15<sup>th</sup> JUNE , 2009.**

**JUDGMENT:**

1. These are the references made under Section 256 (2) of the

Income Tax Act, 1961, by the Income Tax Appellate Tribunal, 'D' Bench, seeking opinion of this court on the question of law arising from its orders dated 30/1/1991. The question referred reads as under -

“Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that the interest paid of Rs.1,66,959/- for discounting the bills with the banks during the course of the business activities was not allowable in computing the business income under Section 37 of Income-Tax Act, 1961 ?”

2. The facts involved in both the applications are common, the issue involved is identical, so the single judgment will dispose of both the reference applications. However, for the sake of clarity the facts are borrowed from Reference application no.345 of 1995.

**THE FACTS :**

3. The statement of the case reveals that assessee company derives income from business of hiring machinery and sale and purchase of yarn and fabrics. The assessee company filed a return of income for the assessment year 1983-84 declaring income of Rs.1,20,300/-.

4. In profit and loss account the assessee company claimed interest of Rs.9,83,019=00. The Assessing Officer (AO) recasted the profit and loss account. He worked out loss including income relating to hire of machinery at Rs.1,74,066/- on the sales of 9.22 crores out of which more than 50% was to Reliance Textile Industries (RTI). The total effect in respect of sales to RTI was loss of Rs.47,70,285/-. This loss was compensated by way of issue of credit note issued by RTI in the month of April, 1982. The A.O. disallowed the loss of Rs.1,74,066/- alleging it to be not relating to the business of the assessee company. The A.O. alternatively held that the loss of Rs.1,74,066=00 is speculation loss.

5. In appeal the CIT (A) held that the loss incurred was not of speculative nature and further considered the details regarding discounting of the bills for which interest was paid. However, he restricted the disallowance of interest paid to banks to Rs.1,66,959/- which was attributable to interest free advance of Rs.47,70,285/- for three months.

6. The Tribunal in exercise of appellate power confirmed the order of C.I.T. (A) and justified treating part of the interest

disallowable and confirmed the order passed in first appeal.

7. On being applied by the assessee-applicant under Section 256(1) of the Act, the present reference is made as stated in the opening part of this order.

**SUBMISSIONS :**

8. Mr.Mistry, learned counsel appearing for the assessee contends that the impugned order of the Tribunal is palpably wrong since the Tribunal failed to take into account the business expediency requiring to make immediate payment resulting in necessity of bills discounting. He further submits that so far as the factum of discounting of bills are concerned, all these bank transactions are held to be genuine one. He further submits that the term “for the purpose of business and commercial expediency” is one of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. According to him, the expenditure may not have been incurred under any legal obligation, but it is allowable as business expenditure; if it is incurred on grounds of commercial expediency. According to him, for the purpose of business includes

expenditure voluntarily incurred for commercial expediency. That it is immaterial if a third party is benefited thereby. He placed reliance on the judgment of the Apex Court in support of his submission in the case of **S.A.Builders Ltd. ..vs.. Commissioner of Income-Tax (A00eals) and anr., [2007] 288 ITR 1 (SC).**

9. Mr.Mistry further submits that for the subsequent assessment years i.e. for assessment years 1984-85 and 1985-86 the similar expenditure was incurred by the assessee and the same was accepted by the Tribunal. The said ruling of the Tribunal has also been accepted by the Revenue. He, therefore, relying upon the subsequent orders of the Tribunal in the case of assessee itself and also in case of M/s Anil Fabrics Ltd. ..vs.. Deputy Commissioner of Income-Tax in ITA No.590 and 592 of 1989/Bom/1989 for the assessment years 1984-85 and 1985-86, went on to argue that the said judgment of the Tribunal once having accepted by the Revenue, it is not open for it to contend otherwise for the earlier assessment year. He, thus, submits that, there cannot be two different yard-sticks for two different assessment years in respect of the very same assessee. That the Tribunal was not justified in holding that the interest paid of Rs.1,66,959/- for discounting the bills with the banks during the course of business

activities was not allowable in computing the business income under Section 37 of Income Tax Act, 1961.

10. Per contra, Mr.Gupta learned counsel for the Revenue strongly opposed the submissions canvassed on behalf of the assessee. He tried to distinguish both the orders on which the reliance was placed by Mr.Mistry. However, faced with the absence of challenge with the order of Tribunal for the subsequent assessment years in the case of assessee itself and also in case of Anil Fabrics Ltd. (referred supra), he could not take his submissions to a logical end.

**CONSIDERATION :**

11. Having heard both the parties without going into the legal niceties involved, if the Revenue has accepted the order of the Tribunal in the case of the assessee itself for subsequent assessment years in the identical facts and circumstances of the case, in that event it is not open for the Revenue to take a contrary stand.

12. The Tribunal in both the cases cited supra, in the identical fact situation has held that the transaction relating to bills discounting

was a genuine one involving larger business interest and business expediency. In the circumstances, we are left with no other alternative but to answer the question referred in negative; i.e. in favour of the assessee and against the revenue.

13. In the result, the references stand disposed of in terms of this orders with no order as to costs.

JUDGE

JUDGE.