IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 1ST DAY OF APRIL 2008

PRESENT

THE HON'BLE MR. JUSTICE DEEPAK VERMA

AND

THE HON'BLE MR. JUSTICE ANAND BYRAREDDY

I.T.A. No.823 OF 2007

BETWEEN:

1. The Commissioner of
Income-Tax,
Central Circle,
C.R.Building,
Queens Road,
BANGALORE.

2. The Deputy Commissioner of
Income Tax,
Circle - 11(1),
C.R.Building,
Queens Road,
BANGALORE. .. **APPELLANTS**.

(By Sri. M.V.Seshachala, Adv.)

AND:

M/s. Bharatiya Reserve Bank
Note Mudran (P) Ltd.,
Corporate Office Nos.3 & 4,
1st Stage, I Phase,
BTM Layout,
Bannerghatta Road,
BANGALORE. .. **RESPONDENT**.

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This I.T.A. filed under Section 260-A of the Income Tax Act, 1961 arising out of order dated 15.06.2007 passed in ITA No.568/BANG/2006 for the assessment year 2002-03 praying to allow the appeal and set aside the order of the Income Tax Appellate Tribunal, Bangalore, in ITA No.568/BANG/2006 dated 15.06.2007 and confirm the order of the Appellate Commissioner confirming the order passed by the Deputy Commissioner of Income Tax, Central Circle – 11(1), Bangalore.

This I.T.A. coming on for Admission this day, **Deepak Verma J.**, delivered the following:

JUDGMENT

Heard Sri.M.V.Seshachala for the appellants.

2. Revenue is before us by filing this appeal under Section 260-A of the Income Tax Act, 1961 (hereinafter shall be referred to in short as "the Act") against the order dated 15.06.2007 passed by the Income Tax Appellate Tribunal in ITA No.568/BANG/2006 for the assessment year 2002-03.

3. After having heard the learned counsel for the appellants and after perusal of the records, we are of the considered opinion that no substantial question of law arises in this appeal for determination of this Court.

4. Short facts, material for deciding the said appeal, are mentioned hereinbelow:

> The assessee is a wholly owned subsidiary of R.B.I. It is engaged in the business of printing new currency notes, which are ultimately supplied to R.B.I. During the relevant previous year, the assessee company ordered four machines known as Ranuma machines for installation at its Mysore plant. The said machines were needed by the assessee for printing of new currency notes. One of the machines costing Rs.171.94 lakhs was extensively damaged during its transit. The said damage was detected at Chennai Port and the machine was sent back to the supplier for its repair. The supplier found that the machine was beyond repair.
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> The said machine was also insured. The claim was preferred by the assessee with the insurance company. The insurance company after ascertaining the facts came to the conclusion that the machine had indeed been extensively damaged. It therefore paid a sum of Rs.152.2 lakhs to the assessee as

against the price of Rs.171.94 paid by the assessee. The difference amount which was not paid by the insurance company to the assessee was written off in P & L Account.

The Assessing Officer noticed that the loss pertains to capital asset. If the assessee had received the assets without damage, it would have found part of block asset. Since this asset was damaged in transit and the difference in the claim received and the amount invested by the assessee normally constitutes capital loss. The machinery was never put to use and it never found part of the block of assets and as such loss cannot be written off against the particular block of assets. The Assessing Officer, therefore, held that the loss of Rs.25,11,255/- is the capital loss and is not admissible as not admissible for deduction.

The Commissioner of Income Tax (Appeals) also concurred with the findings recorded by the Assessing Officer relying on a judgment of the Tribunal reported in 186 ITR 594 (**Zenith Steel Pipes Ltd Vs. CIT**). According to the Commissioner of Income Tax

(Appeals) the expenditure incurred by the assessee is in the capital field. Damage to the said asset in transit is nothing but damage to the said asset and consequential loss is to be construed as a capital loss. It further held that such a loss is not allowable under Section 37 of the Act, as the expenditure is incurred in the capital field. The Commissioner of Income Tax (Appeals) further held that the loss is not allowable under Section 28 of the Act, as the asset was not stock in trade. The matter was taken up further before the Tribunal. The Tribunal after considering the matter from all angles came to the conclusion that the assessee was entitled to claim deduction. While doing so, Section 43(6)(c)(i) of the Act has been put into service.

It could not be disputed before us that the assessee had become the owner thereof, otherwise insurance company would not have paid the amount of compensation to the assessee for the damages caused to the machine. If the machine would not have been damaged in transit, obviously the same would have been put to use by the assessee.

But that stage could not arise as it was damaged before installation.

4. In the light of the aforesaid factual aspect of the matter and after having heard the learned counsel for the appellants, we are of the considered opinion that no substantial question of law would arise for consideration in this appeal. Therefore it is dismissed in limine.

Sd/-
Judge

Sd/-
Judge

AGV.