THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 17.02.2010

+ **ITA 628/2009**

M/S JAY BHARAT MARUTI LTD. ..... Appellant

- versus –

COMMISSIONER OF INCOME TAX ..... Respondent

Advocates who appeared in this case:-
For the Appellant : Mr Santhanam
For the Respondent : Mr Sanjeev Sabharwal

CORAM:
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in Digest?

BADAR DURREZ AHMED, J (ORAL)

1. We have heard the counsel for the parties. The assessee is in appeal before us against the order of the Income-tax Appellate Tribunal dated 15.04.2004 in respect of the assessment year 1995-96. One of the issues sought to be raised is with regard to the deduction claimed by the assessee under Section 80-I of the Income-tax Act, 1961 (hereinafter referred to as 'the said Act') on interest received on letters of credit and bank guarantee money. A similar claim has been made by the assessee in respect of the interest earned on deposits, under sales tax rules, in *Kisan Vikas Patras*, interest received on income-tax refund as also the interest received on inter-corporate deposits. The Tribunal has decided these issues against the

assessee and, therefore, the assessee is in appeal before us. We may straightaway say that these issues no longer survive after the decision of this court in ***Commissioner of Income-tax v. Sriram Honda Power Equip*****: 289 ITR 475**, wherein the said issue has been decided in favour of the revenue and against the assessee. Consequently, these issues do not arise any further and the decision of the Tribunal is correct.

2. The second aspect of the matter is with regard to travelling expenses, which have been incurred by the assessee in connection with the purchase of some plant and machinery. The Assessing Officer had claimed these expenses on the revenue account. However, the Assessing Officer treated the same as 'capital expenditure' and disallowed the same. This was upheld by the Commissioner of Income-tax (Appeals) as well as by the Income-tax Appellate Tribunal. The Tribunal held the said expenditure to be directly connected with the purchase of the plant and machinery and, therefore, the same was to be treated as capital expenditure. We see no reason to interfere with this finding.

3. The third issue sought to be canvassed before us pertains to the deduction claimed under Section 43-B of the said Act. The said amount was disallowed by the Assessing Officer but allowed by the Commissioner of Income-tax (Appeals) and was confirmed by the Tribunal. The Tribunal, while considering the appeal of the revenue on this aspect of the matter, rejected the revenue's contention and upheld the views of the Commissioner of Income-tax (Appeals) that the petitioner was entitled to deduction under Section 43-B of the said Act. The Tribunal, after following the decision of

the Supreme Court in the case of ***Berger Paints India Ltd v. Commissioner of Income-tax, Calcutta*****: 266 ITR 99**, concluded that the details of the additions of the said amount of Rs 51,06,391/- on account of excise duty paid by the assessee was correct. The Tribunal, however, went further to observe that as the said amount of Rs 51,06,391/- was also loaded on the closing stock of the year in question, the opening stock of the succeeding year would have to be reduced so as to avoid a double deduction.

4. The learned counsel for the appellant submitted that a rectification application had been moved before the Tribunal being M.A. No.404/Del/2004, *inter alia*, pointing out that the Tribunal had committed a mistake in directing the Assessing Officer to reduce the amount of excise duty from the opening stock of the next year, while allowing the deduction of Rs 51,06,391/- on account of excise duty paid. However, the Tribunal, by its order dated 31.08.2005, rejected the contention of the appellant / assessee and once again observed that if the amount had been loaded on the closing stock, in order to avoid double deduction, the direction was necessary.

5. Now, before us, the learned counsel for the appellant / assessee submits that the finding of the Tribunal that the sum of Rs 51,06,391/- had been loaded on the closing stock is factually incorrect and, therefore, there was no need for deducting the said sum from the opening stock of the succeeding year. We feel that this aspect of the matter can be adequately addressed by directing the Assessing Officer to verify as to whether the said amount of excise duty paid during the year had been loaded on the closing stock or not. In case it was loaded, then the observations of the Tribunal

would stand. However, if it was not so loaded, then there would be no need for reducing the said amount from the opening stock of the succeeding year.

6. In view of the foregoing discussion, we find that no other issue remains to be considered by us. The appeal stands disposed of in terms of the observations made above as also the direction to the Assessing Officer.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

February 17, 2010

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