

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ITA No.634 of 2009
Date of decision: 30.3.2010

The Commissioner of Income Tax, Faridabad

...Appellant

Versus

M/s.Lsakhani Rubber Works, Plot No.131, Sector-24, Faridabad

...Respondent

**CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE JITENDRA CHAUHAN**

Present: Ms.Urvashi Dhugga, Advocate
for the appellant.

1. To be referred to the reporters or not?
2. Whether the judgment should be reported in the Digest?

M.M.KUMAR, J.

The instant petition filed by the Revenue under Section 260-A of the Income-tax Act, 1961 is directed against order dated 10.12.2008 passed by the Income Tax Appellate Tribunal, Delhi Bench 'D' Delhi (for brevity 'the Tribunal') in ITA No.1295(Del) of 2007 in respect of the assessment year 2003-04.

The revenue has claimed the following three questions:-

1. Whether on the facts and in the circumstances of the case, the Ld. ITAT was right in law in confirming the order of the Ld.CIT(A) in deleting the addition of Rs.13,01,730/- made by the Assessing Officer on

account of late deposit of employees' contribution to PF disregarding the fact that the payments were made beyond the due dates and were, therefore, not allowable u/s 36(1)(va) and were to be treated as income u/s 2(24)(x) of the Income Tax Act, 1961, in contravention of the decision in the case of CIT vs. Pamwi Tissues Limited 215 CTR 150(Bom.)?

2. Whether, on the facts and in the circumstances of the case, the Ld. ITAT was right in law in confirming the order of the Ld. CIT(A) in deleting the addition of Rs.12,86,353/- made by the Assessing Officer on account of late deposit of employer's contribution to PF and Admn. Charges of Rs.52,584/- and Rs.240/- as Insp. charges without appreciating the fact that payments were not made by the assessee within the prescribed "due dates" by which the assessee was required to make payments, in contravention of the decision in the case of CIT vs. Pamwi Tissues Limited 215(CTR) 150 (Bom.)?
3. Whether, on the facts and in the circumstances of the case, the Ld. ITAT was right in law in confirming the order of the Ld. CIT(A) in deleting the addition of Rs.1,22,964/- made by the Assessing Officer on account of expenditure incurred in connection with

load extension (P&E) and purchase of distribution panel (R&M) even though the benefits flowing from extension of load and replacement of old panel were of enduring nature, therefore, the same were capitalised?”

Learned counsel for the revenue at the outset states that she does not wish to press question Nos. 1 and 2 on account of a judgment of Hon'ble the Supreme Court rendered in CIT v. Alom Extrusions Ltd., (2009) 319 ITR 306 (SC). Accordingly question Nos. 1 and 2 are decided against revenue and in favour of the assessee-respondent.

However, in respect of question No.3, she has submitted that the expenditure incurred in connection with load extension and purchase of distribution panel should be regarded as capital expenditure instead of the revenue expenditure. A perusal of the order passed by the CIT(A) would show that the expenditure has been incurred in the ordinary course of business and only a small part of panel to several motors or machines was replaced and added. The expenditure is recurring in nature and, therefore, has been regarded by the Assessing Officer as revenue expenditure by CIT(A). Accordingly, disallowance of Rs.1,22,964/- has been deleted by CIT(A). On further appeal, the aforesaid view has been upheld in para 6 of the order of the Tribunal. Referring to the purchases of distribution panel on 7.10.2002 and incurring of expenditure on extension of load, the Tribunal has held that no asset of enduring nature had come into existence by

incurring such expenditure. It has further been reiterated that the expenditure was incurred in the ordinary course of business. Accordingly, the view of the CIT(Appeals) was upheld.

Having heard the learned counsel, we are of the considered view that the question whether expenditure is of capital expenditure or revenue expenditure is necessarily a question of fact. There are various ingredients which constitute the conclusion whether the expenditure is capital in nature or revenue has been gone into and in that regard, we do not find any apparent material on the face of record warranting interference of this Court. All the inputs constituting the revenue expenditure stands satisfied and the findings do not suffer from any legal infirmity. Accordingly, question No.3 is also answered against the revenue by upholding the order of the Tribunal.

Accordingly, this appeal fails and the same is dismissed.

(M.M.KUMAR)
JUDGE

30.3.2010
mk

(JITENDRA CHAUHAN)
JUDGE

