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

\+ ITA 987/2007

C.I.T ..... Appellant
Through: Ms. Prem Lata Bansal with Mr. M.P. Gupta, Mr. Sanjeev Rajpal & Ms. Anshul Sharma, Advs.

versus

D.C.M. LTD. ..... Respondents
Through: Mr.S.K. Aggarwal, Adv.
.

CORAM:
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

% 13.1.2009

We have heard arguments of learned counsel for the parties in some detail.

On behalf of the Revenue Ms. Prem Lata Bansal presses that several questions of law arise which warrant a consideration of the present Appeal. The Revenue in its Appeal has thus proposed the following questions of law:-

(i) Whether ITAT was correct in law in allowing deduction of Rs 8,71,20,781/- to the assessee being retrenchment compensation paid by the assessee to the employees of DCM? Unit situated at Bara Hindu Rao on its closure on 01.04.1989?

(ii) Whether ITAT was correct in law in allowing the deduction of retrenchment compensation, which was incurred by the assessee not for the purposes of carrying on of the business but on the closure of its business on 01.04.1989?

(iii) Whether ITAT was correct in law in allowing deduction of Rs 1,86,69,703/- to the assessee being interest paid on money borrowed for the purposes of making payment of retrenchment compensation and PF to the employees of DCM Unit on its closure?

(iv) Whether ITAT was correct in law in allowing a sum of Rs 3,57,700/- to the assessee being legal expenses incurred on account of closure of DCM Unit?

(v) Whether expenditure incurred by the assessee on

interest and legal expenses is the revenue expenditure or capital in nature?

(vi) *Whether ITAT was correct in law in allowing deduction of Rs 1,80,20,261/- to the assessee being the loss suffered by the DCM Employees Provident Fund Trust on sale of securities and not the loss suffered by the assessee itself?*

(vii) *Whether ITAT was correct in law in allowing the deduction of Rs 1.80 crores to the assessee even though the loss was not incidental to carrying on of the business of the assessee but was incurred on closure of DCM Unit?*

(viii) *Whether ITAT was correct in law in holding that the profit earned by the assessee on sale of building at 16, Barakhamba Road was to be assessed under the head "Capital Gain" and not under the head "Income from Business"?*

(ix) *Whether order passed by ITAT is perverse in law and on facts?*

The learned counsel for the Revenue Ms Prem Lata Bansal in the course of her submission has conceded before us that as regards the first five questions the outcome of the appeal depends completely, and that with regard to questions (vi) and (vii) partially, upon the view that this Court would take with respect to the conclusion arrived at by the Tribunal that the business of the assessee had not closed down. In support of her submissions she adverted to the Assessment Order.

We find that not only the Commissioner of Income Tax Appeals [hereinafter referred to as in short as 'CIT(A)'] but also the Tribunal has considered the matter in some detail and returned a finding of fact in paragraph 85 and 86 of the impugned judgment. Briefly, the Tribunal has held that it is not disputed that the Assessee had several businesses like manufacturing of textile, vanaspati, chemicals, rayon tyre cord, PVC, sugar, fertilizers, cement etc. It also noted that the fact that in so far as the business of textile was concerned it has four manufacturing units, out of

which , one unit i.e. DCM mills unit located in Delhi had to be closed down as according to the Master Plan of Delhi in was located in non-conforming area. Admittedly, the other three units which were involved in manufacturing of textile continued to carry on business. The Assessee had claimed deduction of expenses pertaining to the DCM Mill Unit on account of retrenchment compensation paid to employees amounting to Rs 8,71,20,781/-; interest amounting to Rs 1,86,69,703/- on monies borrowed for the purposes of making payment of Retrenchment compensation and Provident Fund to the employees; and a sum of Rs 3,57,700/- expended towards Legal expenses.

As noticed above, the answer to this question turned on whether closure of the DCM mill unit would amount to closure of business as contended by the Revenue. As found by the Tribunal there was no closure of business since DCM mill unit was only a part of the textile manufacturing operations, which continued even after the closure of the DCM Mill Unit as the assessee continued in the business of manufacture of textile in the three remaining units. In arriving at this conclusion the Tribunal looked at various aspects of the matter as is evident from a bare reading of findings recorded in paragraph 85 and 86 of the impugned judgment. It is specifically noted that the assessee prepared a consolidated Profit & Loss account and Balance Sheet of all its manufacturing units taken together; the control and management of the assessee was centralized in the Head Office, and also, the fact that all important policy decisions were taken at the head Office. The Tribunal also noted the fact that the Head Office provided funds required for

various units and that there were common marketing facilities for all textile units. The Tribunal upon application of the tests laid down by the Supreme Court in the case of ***CIT vs Prithvi Insurance Co; (1967) 63 ITR 638*** and Produce ***Exchange Corporation Ltd vs CIT; 77 ITR 739 (SC),*** came to the conclusion that there was inter-connection, inter-lacing and unity of control and management, common decision making mechanism and use of common funds in respect of all four units. It repelled the arguments of the Revenue, which was, once again pressed before us for consideration that, the DCM mill unit was a separate business and hence with the closure of the DCM mill unit assessee ought not be allowed deduction of the aforementioned expenses, based on the fact that in respect of the DCM mill unit the assessee maintained separate Books of Accounts and engaged separate workers.

In view of the findings of fact returned by the Tribunal by applying the test laid down by the Supreme Court in the case of ***Prithvi Insurance Co.*** *(supra)* and ***Produce Exchange Corporation*** *(supra)* no fault can be found with the reasoning of the Tribunal.

Similarly, with respect to the proposed questions (vi) and (vii) it was contended on behalf of the Revenue that the deduction of sum of Rs 1,80,20,261/- could not have been allowed, in view of the fact that the Assessee had claimed the deduction on account of monies paid by the assessee to its employees working in DCM mill unit to overcome the loss suffered by the DCM Employees Provident Fund Trust (hereinafter to referred to in short as the 'Trust') on sale of Securities. Learned counsel for the Revenue, Ms Prem Lata

Bansal in support of her contentions relied upon the provisions of Section 10(25) of the Income Tax Act, 1961 (hereinafter referred to in short as the 'Act'). It was contended that the deduction claimed by the Assessee could not be allowed in view of the provisions of Section 14A of the Act which provides that only that expenditure can be allowed as deduction which is incurred by the assessee in relation to income which forms part of the total income under the Act. Since the income from securities was exempt under Section 10(25) of the Act and was not included in computing the total income of the assessee, the expenditure incurred could not be claimed as deduction by the assessee. She further contended that the deduction could also not be claimed as it was an expense connected to the closure of DCM mill unit which was a separate and distinct business from that of the other 3 units.

According to us, both the submission made on behalf of the Revenue are untenable. With respect to the second submission we may only note that having concurred with the view of the Tribunal that there was no closure of the business this submission is rejected and hence need not detain us any further. As regards her other submission it would be important to note the following undisputed facts recorded by the Tribunal:

(i) The services of the employees of the DCM mill unit having been terminated the provident fund dues had to be paid to them. The assessee had its own provident fund scheme known as DCM Employees Provident Fund Trust which was recognized under the Employees Provident Fund Act, 1952 (hereinafter called as 'EPF Act'). The Trust was required to declare the same rate of interest

for their members as was declared by the Central Government under the EPF Scheme, 1952. Furthermore, the grant of exemption was also predicated on a condition that if the Board of Trustees were unable to pay the rate of interest, at the rate declared by the Central Government, for any reason, then, deficiency on that account had to be made good by the employer i.e. assessee. It is in this background that on termination of services of its employees when the Provident Fund dues were required to be paid, the trust approached the Regional Provident Fund Commissioner (in short 'RPF Commissioner') to obtain approval for sale of government securities, in order to make payment to the employees. The RPF Commissioner by a letter dated 19.04.1989 granted the said permission with a caveat that in the event of any deficiency on sale of securities the burden would have to be borne by the Assessee, in order to ensure that the employees would get the rate of interest equivalent to the rate paid by the Central Government. Undoubtedly there was a loss on sale of security. The Assessee in order to ensure that the employees, in accordance with the approval granted by the RPF Commissioner, would be paid a rate of interest equivalent to that paid by the Central Government, incurred an expenditure of Rs 1,80,20,261/-.

A bare reading of the aforementioned undisputed facts would show that this was an expense incurred by the Assessee towards its employees. The loss on sale of securities was only a trigger based on which these expenses had to be incurred by the assessee. In view of this the provisions of Section 14A of the Act, according to us, have no applicability whatsoever. We find no fault with

impugned judgment even of this issue.

As regards question no. (viii) it was urged by the Revenue that the Tribunal erred in holding that the profit earned by the assessee on sale of portion of the property situated at 16, Barakhamba Road, New Delhi was assessable under the head "Capital Gains" and not under the head "Income from Business". In this regard, it is relevant to note that the property was held for several years in the Capital Account, that is, since 1967 and was shown in the balance sheet of the assessee as a "capital asset". The decision in *G. Venkataswami Naidu –vs- CIT*, (1959) 35 ITR 594 was applied to come to the conclusion that the sale of the property would result in capital accretion and not as profits from trade when such properties are sold. The Tribunal held that the decision to sell the property was necessitated to improve the cash flow of the Assessee. Finally, the decision of the CIT(A) holding that the income of the sale of the 10th Floor in the same building in the subsequent year 1991-1992 was Capital Gains has been accepted by the Revenue. We find no error in the reasoning of the Tribunal even with respect to this issue.

We find no perversity in the impugned judgment. No substantial question of law arises for consideration of this Court. In the result the appeal is dismissed.

VIKRAMAJIT SEN, J.

RAJIV SHAKDHER, J.

JANUARY 13, 2009
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