

(1986) 01 P&H CK 0002

High Court Of Punjab And Haryana At Chandigarh**Case No:** IT Reference No. 96 of 1977

Commissioner of Income Tax

APPELLANT

Vs

Oswal Spg. and Wvg. Mills Ltd.

RESPONDENT

Date of Decision: Jan. 13, 1986**Citation:** (1986) 26 TAXMAN 206**Hon'ble Judges:** S.P. Goyal, J; G.C. Mittal, J**Bench:** Division Bench**Advocate:** Ashok Bhan and Ajay Mittal, for the Appellant; Balwant Singh Gupta, for the Respondent

Judgement

G.C. Mittal, J.

The Tribunal has referred the following two questions for opinion of this Court:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the interest of Rs. 2,55,321 paid by the assessee on purchase of machinery should be considered as part of the cost of machinery and that the assessee-company was entitled to depreciation and development rebate on the said sum?
2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in deleting the addition of Rs. 19,607 paid by the assessee on account of registration expenses for raising a loan of Rs. 5 lakhs for the purpose of Unit No. 5?

The first question arises out of the following facts. Oswal Spg. & Wvg. Mills, Ludhiana (the assessee), was carrying on the business of spinning and weaving of woollen yarn, manufacture of civil and military blankets and woollen fabrics, etc. For the purpose of starting a new unit with 928 spindles, for production of woollen yarn, the assessee purchased machinery from Sant Andrea Novara, Italy, on deferred terms basis. The payment for the machinery was to be made in yearly equal instalments, spread over a period of ten years and, while paying the instalments, interest due on the balance price had to be included. In this manner, the assessee

paid an amount of Rs. 2,55,321 by way of interest. The assessee claimed that the aforesaid interest paid by it on purchase of machinery should be considered as part of the cost of machinery and that it was entitled to depreciation and development rebate on the said sum. While the ITO and the AAC did not agree with the assessee, the Tribunal agreed with the assessee and gave the necessary relief. The learned counsel for the assessee has relied on the following four decisions- Challapalli Sugars Ltd. v. CIT (1975) 98 ITR 167 (SC), CIT v. Tensile Steel Ltd. (1976) 104 ITR 581 (Guj), Ballarpur Paper & Straw Board Mills Ltd. v. CIT (1979) 118 ITR 613 (Bom.) and CIT v. New Central Jute Mills (1982) 135 ITR 736 (Cal.). We have gone through the aforesaid decisions and find that they fully support the assessee's case. Following the aforesaid decisions, the first question is answered in favour of the assessee, i.e., in the affirmative.

2. For the decision of the second question, the relevant facts may be noticed. The assessee raised a loan of Rs. 5 lakhs from Punjab Financial Corpn. for the purposes of setting up a unit for manufacturing vanaspati ghee. As already noticed, the assessee hitherto before was only carrying on the business of spinning and weaving of woollen yarns, manufacture of civil and military blankets and woollen fabrics, etc., and had never done the business of manufacturing of vanaspati ghee. This was a new venture. In obtaining loan for the new venture, the assessee incurred registration expenses of Rs. 19,607 and claimed this amount as business expenditure. The ITO found that the unit for manufacturing vanaspati ghee had not been set up during the relevant accounting period, although loan of Rs. 5 lakhs had been taken for the purpose and, as a consequence, held that the expenditure was not incurred for carrying on the business of vanaspati ghee and disallowed the claim. This decision was upheld by the AAC. However, on appeal to the Tribunal, the addition of Rs. 19,607 was deleted after following Prem Spg. & Wvg. Mills Co. Ltd. v. CIT (1975) 98 ITR 20 (All.) and CIT v. Alembic Glass Industries Ltd. (1976) 103 ITR 715 (Guj.).

3. After hearing the learned counsel for the parties, we are of the view that the Tribunal was right in concluding that the registration expenses incurred for obtaining the loan was business expenditure. The decision in Alembic Glass Industries Ltd.'s case (supra) is on all fours with the present case. There also, loan was taken by a running concern for starting a new industrial unit of a different kind and registration charges incurred in obtaining the loan were allowed as business expenditure. Prem Spg. & Wvg. Mills Co. Ltd.'s case (supra) also fully supports the assessee's case. There, loan was taken to set up a new unit although of the same kind which the assessee was already running and the registration expenses incurred in obtaining the loan for the new unit were allowed as business expenditure. The facts are slightly different but, on principle, there is no difference because we have to keep in view the rule laid down by the Supreme Court in [India Cements Ltd. Vs. Commissioner of Income Tax, Madras](#), which is in the following terms:

- (a) the loan obtained is not an asset or advantage of an enduring nature;
- (b) that the expenditure was made for securing the use of money for a certain period; and
- (c) that it is irrelevant to consider the object with which the loan was obtained.

Once the loan is not an asset or advantage of an enduring nature, the object with which it was raised would be wholly irrelevant. Therefore, even if the unit of manufacturing vanaspati ghee had not been set up, nevertheless, the registration expenses on obtaining the loan would be a business expenditure and not of a capital nature. Moreover, the assessee concern was already a running concern and was carrying on the business of spinning and weaving of woollen yarn, manufacture of civil and military blankets and woollen fabrics, etc., and the endeavour was to set up a new vanaspati ghee unit.

4. Certain observations made in Challapalli Sugars Ltd.'s case (supra) at page 178 were sought to be relied upon by the department to show that it would be different position when a loan is raised by a running concern unlike an assessee when the loan is taken before the commencement of the production. The observations are in totally different context and, in no way, support the department. In any event, the loan in the instant case was taken by a running concern although for setting up a totally new unit of a different kind. Therefore, the loan cannot be taken as an asset or an advantage of enduring nature.

5. For the reasons recorded above, we hold that registration expenses of Rs. 19,607 incurred by the assessee was business expenditure and the Tribunal was right in deleting the addition. Accordingly, we answer the second question in the affirmative, i.e., in favour of the assessee and against the department. The parties are left to bear their own costs.