

**(2011) 05 DEL CK 0397**

**Delhi High Court**

**Case No:** ITR No. 424 of 1992

J.K. Synthetics Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

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**Date of Decision:** May 19, 2011

**Citation:** (2011) 200 TAXMAN 101

**Hon'ble Judges:** Sanjay Kishan Kaul, J; Rajiv Shakdher, J

**Bench:** Division Bench

**Advocate:** P.N. Monga and Manu Monga, for the Appellant; N.P. Sahni, for the Respondent

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### **Judgement**

Rajiv Shakdher, J.

The captioned reference pertains to the Assessment Year 1983-1984. The reference has been made at the behest of the revenue. We have been called upon to adjudicate upon the following questions of law:

(i). Whether on the facts and in the circumstances of the case, the ITAT was correct in law in allowing deduction for interest and insurance charges in respect of plant and machinery installed in the premises of M/s. J.K. Cotton Spinning and Weaving Mills Ltd.?

(ii). Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that 50% of the expenditure incurred by the Assessee in connection with the Kamla Retreat was allowable as deduction in computing its income?

(iii). Whether on the facts and in the circumstances of the case, the ITAT was correct in law in holding that expenses of Rs. 1,03,492/- for making kachcha road to a concrete road were revenue nature?

(iv). Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the Assessee was entitled of depreciation at 15% on plant and machinery installed in the SSF, Tyre Cord and Rayon units of the Assessee?

(v). Whether on the facts and in the circumstances of the case, the ITAT was correct in law in holding that the Assessee was entitled for depreciation @ 15% on additions to the plant and machinery of cement unit, on the ground that it was coming in contact with corrosive material?

(vi). Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the business of cement unit No. 3 had been set up on 06.04.1982 and the expenditure incurred thereafter was allowable as revenue expenditure?

Question Nos. (i) & (ii).

2. In so far as question Nos. (i) & (ii) are concerned, we note that similar questions were returned unanswered by this Court while disposing of ITR No. 286/1987 and ITR No. 138/1988 respectively. We are informed that the questions in ITR No. 286/1987 and ITR No. 138/1988 were returned unanswered due to the fact that the amounts involved were small. In the instant case, the amounts involved are once again miniscule. The sum involved in question Nos. (i) and (ii) are only Rs. 38,484/- and Rs. 50,778/- respectively. Accordingly, these questions are returned unanswered. As indicated above, this would result in the Tribunal's finding being sustained.

Question No. (iii)

3. As regards question No. (iii), the finding of the Tribunal is that the Assessee had undertaken expenses in issue, for providing a hard top on what was a kachcha road. The Tribunal after deliberating on the matter and after considering the ratio of the judgments passed in [Lakshmiji Sugar Mills Co. P. Ltd. Vs. Commissioner of Income Tax, New Delhi](#), ; [Travancore-cochin Chemicals Ltd. Vs. Commissioner of Income Tax, Kerala](#), and also the judgment in the case of [Empire Jute Co. Ltd. Vs. Commissioner of Income Tax](#), came to the conclusion that the expenses incurred by the Assessee was not of a capital nature and hence, the deduction ought to be allowed. Having regard to the observations made by the Tribunal and the findings of fact returned therein that the expense incurred to improve a road by providing for a hard top, we concur with the view taken by the Tribunal. Accordingly, the said question is answered in affirmative and against the revenue.

Question Nos. (iv) & (v)

4. In so far as question Nos. (iv) & (v) are concerned, these are covered once again by a decision rendered by this Court in ITR No. 286/1987 and ITR No. 21/1996. The decision in ITR No. 286/1987 was passed on 07.01.2008, whereas the decision in ITR No. 21/1996 was passed on 16.08.2010. In both instances, similar questions of law were answered against the revenue. A similar position would thus prevail in respect of the question Nos. (iv) and (v) referred to in the captioned reference. Accordingly, question Nos. (iv) & (v) are answered against the revenue.

Question No. (vi)

5. Briefly, the question involves the categorization of interest paid on debentures issued by the Assessee.

6. It is the stand of the revenue that the interest should be treated as capital expenditure, and accordingly, capitalized vis-à-vis the value of the plant, for which debentures were issued.

7. On the other hand, the Assessee argues to the contrary.

8. Having perused the orders of the authorities below, it is not in dispute that the business commenced on 06.04.1982. It is also not in dispute that the production of cement commenced on 18.12.1982. Mr. Sahni, who appears for the revenue, says that since the production in the cement plant commenced from 18.12.1982, interest paid on debentures prior to the said date ought to be capitalized.

9. Mr. Sahni points out that the total amount involved is a sum of Rs. 5,29,082/-. He is, however, not able to give us a bifurcation of the amount in relation to the periods involved (i.e., what part of the interest pertains to 06.04.1982 to 18.12.1982, and that which pertains post 18.12.1982).

10. It appears on a reading of the observations made by the CIT (A) in paragraph No. 33.2 of its order that the sum of Rs. 5,29,082/- is interest paid by the Assessee for the period 18.12.1982 to 31.12.1982. The relevant extract of the same reads as follows:

...Further, he also disallowed Rs. 5,29,082/- being expenses on account of interest on debentures (3rd series) incurred from 18.12.1982 to 31.12.1982.

11. Even though, Mr. Sahni disputes this position, he is not able to give us an exact bifurcation as indicated hereinabove. Therefore, according to us, if a sum of Rs. 5,29,082/- has been paid as interest by the Assessee for the period 18.12.1982 to 31.12.1982, then in any case, this interest cannot be capitalized. Even if we were to accept the argument of Mr. Sahni that a portion of this interest was paid prior to 18.12.1982 but after 06.04.1982, we are not persuaded to hold that this interest can be capitalized. The reason being that the business of the Assessee commenced on 06.04.1982. The CIT (A) in principle has accepted this position in law by relying upon a decision rendered by the Gujarat High Court in the case of [Commissioner of Income Tax, Gujrat I Vs. Saurashtra Cement and Chemical Industries Ltd.,](#) . As a matter of fact, the CIT (A) has quoted and applied the observations made by the High Court.

12. In the instant case the CIT (A) rejected the Assessee's appeal only on one ground, which was, was that in the books of accounts interest on the debentures had been capitalized and depreciation had been evidently claimed. The CIT (A) was of the opinion that since this involved enlargement of the claim before him, he had

to confine the Assessee to the claim made before the Assessing Officer. Mr. Sahni found succour in the observation of CIT (A) and consequently sought to advance his submission on that very line.

13. We are, however, not persuaded by this stand adopted by the revenue. In our considered view, once the facts are on record and there is no dispute with regard to the facts in issue, the claim if otherwise allowable in law ought to endure to benefit the Assessee. Accordingly, we are of the opinion that even if the interest on debentures ran for the period from 06.04.1982 to 18.12.1982, it would have to be allowed as revenue expenditure since the business of the Assessee undoubtedly commenced on 06.04.1982. We are in respectful agreement with the principle enunciated in Saurashtra Chemicals Ltd. case.

14. Mr. Sahni further contended that in case the court was not persuaded by the stand of the revenue then in any case, the depreciation claimed by the Assessee will have to be withdrawn, (if at all) the Assessee had laid claim to the same. We are in agreement with this submission of Mr. Sahni. The Assessing officer shall, (while passing orders giving effect to the observations made above) disallow the depreciation, if any, claimed by the Assessee.

15. With the aforesaid observations, the captioned reference is disposed of. The effect of our judgment will have to be undoubtedly, worked out by the Assessing Officer.