The Triveni Engg. Works Ltd. vs Dy. Commissioner Of Income Tax, Special ... on 5 July, 2003

ORDER

S.K. Yadav, J.M.

1. This appeal by the assessee is directed against the order of the CIT(A) on following grounds :-

> "That the CIT(A) erred on facts and in law in confirming the addition of Rs 1,68,71,980/- to the valuation of closing stock by not accepting the change in the method of valuation of closing of levy sugar to lower of cost or realizable value from lower of cost or average realizable value of levy and free sale sugar.
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> 1.2 That the CIT(A) erred on facts and in law in observing inter alia that the very fact that the appellant changed the method of valuation again in AY 1993-94 shows that the change in the relevant AY 91-92 was not bona fide.
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> 2.1 That the CIT(A) erred on facts and in law in not directing the exclusion of Rs 5,51,94,292/- from the income of the appellant.

2.2 That the CIT(A) erred on facts and in law in observing inter alia that 'the contract receipts were thus realized as per the terms of the contract agreement: and 'the bank guarantees which had been furnished for the removal of the defects, if any, were in the nature of the securities and the same did not effect the accrual of the contract receipts in favour of the appellant company.

3. That the CIT(A) erred on facts and in law in confirming the action of the AO in allowing depreciation on expenditure of Rs. 5,65,005/- at the rate of 10% treating the same as part of furniture and fixtures as against the claim of the appellant for total write off of the expenditure either as current repair or as temporary structures eligible for 100% depreciation.

4. That the CIT(A) erred on facts and in law in confirming disallowance of expenditure of Rs 9,100/- on repairs at the residence of employees as non business expenditure.

5.1 That the CIT(A) erred on facts and in law in confirming the action of the AO in disallowing deduction for interest accrued but not due amounting to Rs. 21,15,615/- on sugar development fund loan.

5.2 That the CIT(A) erred on facts and in law in further holding that the amount of interest was even disallowable as per section 43(a) of the Act without appreciating that the amount of interest was not due for payment.

5.3 Without prejudice that the CIT(A) erred on facts and in law in not holding that the disallowance,

if at all, should have been restricted to Rs. 9,00,000/- only being the interest pertaining to the year.

6.1 That the CIT(A) erred on facts and in law in confirming the action of the AO in disallowing interest amounting to Rs. 15,54,540/- on excess levy sugar price.

6.2 That the CIT(A) erred on facts and in law in observing, inter-alia, that the liability towards the interest cannot be said to have been crystallised.

7.1 That the CIT(A) erred on facts and in law in disallowing deduction for provision of bad and doubtful debts amounting to Rs 25 lakhs.

7.2 That the CIT(A) erred on facts and in law in observing inter-alia that 'the quantification of bad debt provision of Rs. 25 lakh is also without any basis and is admittedly a liability which may arise in future.

8. That the CIT(A) erred on facts and in law in not allowing full relief requested for in respect of entertainment expenditure which disallowance was returned at Rs. 12,76,373/- but disallowed by the DCIT at Rs. 14,80,175/-."

2. Ground no.1 relates to an addition of Rs. 1,68,71,980 to the valuation of closing stock. The facts in brief borne out from the record are that the assessee under account, the assessee has changed the method of valuation of closing stock. The assessee has put a note Schedule 25 of the balance sheet stating therein that the company has changed the method of valuation of closing stock of sugar. This has been valued independently at low cost or realizable value of levy price instead of averaging it with the free sugar sales price. The AO observed from this changed method of valuation that had the company continued to value levy sugar stock on the basis followed in earlier years, the value of stock of finished goods and net profit would have been higher by Rs. 168.72 lakh. He further observed from the Director's report that this year has been a record year for the company in terms of growth in turnover and profits. The gross turnover has increased by 47% over last year and net profit after tax by 106%. He further observed that his change has been made according to the Director's report to bring the method of valuation of sugar stock in line with the accepted practice in the sugar industry. The assessee was asked to explain as to why this change should be accepted and through its written submissions, it was stated on behalf of the assessee that the change in the method of valuation is in accordance with the guidelines of the Institute of Chartered Accountants of India that the inventories should be valued at lower historical cost and net realizable value. It was further explained before the AO that in the past levy and free sale sugar have been treated as one item which was not correct either on facts or on law in so far as levy sugar is totally a different item to free sale sugar as recognized not only by the bankers of the assessee company but also by the Excise authorities and separate records had to be kept of two types of sugar. he accordingly, valued these two types of sugar independently. In support of his contention, the assessee has relied upon some case laws. The AO has noted that upto AY 90-91 the assessee had been continuously following a particular method for valuing the closing stock of sugar but suddenly in AY 91-92, in changed the method of valuing the closing stock of sugar and third method was followed only upto the next year i.e. 92-93 and in the AY 93-94, the assessee again reverted back to his old method. The AO has

observed that the assessee had changed its method of valuing the closing stock with the intent to avoid incidence of tax resorted by record growth in turnover and in profits. The AO further examined the auditor's report and the method of accounting and formed a view that whenever it suited the assessee to avoid the incidence of tax, the method of valuation of closing stock has been adopted according to assessee's convenience. Since the change is not bona fide, it cannot be allowed. He, accordingly, worked out the profit by adopting the old method of valuation of closing stock which resulted into higher profit by Rs. 1,68,71,980.

3. An appeal was preferred before the CIT(A) with the submission that the change in the method of valuation of stock in the subsequent assessment year 93-94 was, in fact, not bona fide, being irrational and unscientific against accepted accounting procedures and resulting in unrealized profits being brought into account and should be rejected and the method of valuation in the relevant assessment year 1990-91 is more rational and scientific and should be accepted. He further pleaded that the assessee would have no objection if the same method adopted in the year under appeal is consistently adopted in tax assessments in all subsequent assessment years. The CIT(A) re-examined the issue in the light of various case laws referred to before him and confirmed the addition after making the following observations:-

> "I have carefully considered the submissions of the appellant, the observations made in the assessment order as well as the facts of the case. Till AY-91-91, the appellant valued the levy sugar and the free-sale sugar as a single item on the basis of the lower of the cost or the average realizable value of free and levy sugar which method was given up only in the AY 91-92 and 92-93 after which the appellant again switched back to the old method of valuation adopted upto AY 90-91. The contention of the appellant that the changed method of valuation should be applied to the subsequent years from AY 93-94 onwards does not help the appellant's case as the very fact that the appellant changed the method of valuation again in AY 93-94 shows that the change in the relevant AY 91-92 was not bona fide. In any case the subsequent events show that the method adopted in the year under appeal has not been followed consistently in future. The details in paras 5 and 8 of the assessment order also indicate that the appellant reduced its incidence of tax through the change in the method o valuation. It was held in the case of ITO Vs Food Specialties, 206 ITR 119 that such change was permissible when it was bona fide and not for the purpose of evading tax. I also agree with the AO that the appellant's reliance on the judgments in the cases of Carborandum Universal Ltd. and National Grindlays bank is misplaced as method adopted by the appellant is not bona fide or restricted for a particular year and not regularly followed in the subsequent years. It was held by Bombay High Court in the case of Hari Nagar Sugar Mills Ltd. Vs. CIT 207 ITR 901 that there could be no splitting up of the stock of sugar and its valuation at different rates. In view of these observations as well as the judgments quoted by the AO in Para 10 of her order the contentions of the appellant are rejected and the addition of Rs. 1,68,71,980/- is upheld."

4. Aggrieved, the assessee has preferred an appeal before the Tribunal and besides reiterting its earlier contentions, it contended before us that the assessee was to sell its production of sugar at levy price and market price at a rate determined by the Govt from time to time. During the previous year, the assessee changed its method of valuation of closing stock treating levy of sugar as a separate product as the assessee was advised that such method of closing stock is more rational and scientific. Since the levy sugar and free sale sugar are treated as separate item for the purpose of levy of excise duty and by the bankers for the purpose of providing finance, the method of valuation of stock of levy sugar and free sale sugar on the same basis was not in order. He further submitted that the change in method of closing stock in the previous year relevant to the AY 93-94 and the method being followed by the assessee in the past does not impinge on the bona fides of the change made in the previous year relevant to the AY 91-92 which is more rational scientific and acceptable method of valuation. It was further contended on behalf of the assessee that the subsequent change in the method of valuation during the previous year relevant to the AY 93-94 may call for being rejected but that change cannot result in the present change being rejected. In support of his contention, he has relied upon the following judgements :-

1. CIT Vs. Carborandum Universal Ltd. 149 ITR 759

2. CIT Vs. National Grindlays Bank Ltd. 145 ITR 457

3. CIT Vs. Mopeds India Ltd. 173 ITR 347 (AP)

4. CIT Vs. Sohan Lal 123 Taxman 660

5. Reform Flour Mills P. Ltd. Vs. CIT 114 ITR 227

5. The Id. DR on the other hand, besides relying upon the order of the CIT(A) has emphatically argued that the assessee had been consistently following an average method of valuing the stock of sugar upto the AY 90-91 and the same was duly accepted by the Revenue. When it was noticed by the assessee that this year is the record year for the company in terms of growth in turnover and profits and the gross turnover has increased by 47% and net profit after tax by 106%, the assessee changed the method of valuation of closing stock of sugar to avoid incidence of tax. This change in method was valued upto the AY 92-93 and again in AY 93-94 the assessee reverted back to its old method of valuation of closing stock of sugar. The acts and deeds of the assessee clearly indicate that the change in valuation of closing stock was done by the assessee at its own convenience. The facts of the case categorically lead to a conclusive opinion that change in method of valuation of closing stock is not bona fide but with intent to avoid incidence of tax. As such, in cannot be allowed, Ld. DR further contended that the contention of the assessee that the method of valuation adopted in the impugned assessment year should be accepted and followed continuously in future and further change in method of valuation adopted in the AY 93-94 should be outrightly rejected. The Id. DR further submitted that it has been repeatedly held that the assessee has a right to change its method of accounting or valuation of closing stock but it should be bona fide and continuously followed in succeeding years. But in the instant case, the method of valuation of closing was changed only during the AY 91-92 and 92-93 with the intent to reduce the incidence of tax and thereafter, the

assessee again reverted back to its old method of valuation. In these circumstance, it cannot be said that change in method of valuation is bona fide. In support of his contention, he relied upon the following judgements :-

> Abad Fisheries Vs. CIT 244 ITR 21 Harinagar Sugar Mills Ltd. Vs. CIT 207 ITR 901 Indo Commercial Bank Ltd. 44 ITR 22 Snow White Food products Co. Ltd. Vs. CIT 141 ITR 861 CIT Vs. Soma Textiles & Industries Ltd. 253 ITR 137

6. On consideration of river submissions and from a careful perusal of record, we find that admittedly, the assessee had been following the average method of valuation of closing stock of sugar since beginning till AY 90-91 and the same method of valuation was duly accepted by the Revenue. It is also an admitted fact that the previous year relevant to the assessment year in question is a record year for the company in terms of growth in turnover and profits and by adopting this changed method of valuation of closing stock, the profit of the assessee company has been substantially reduced. When profit of the assessee company has been substantially reduced by making change in the valuation of closing stock, it has become all the more necessary for the revenue authorities to look into the real intention of the assessee for making a change in the method of valuation of closing stock. In the instant case, on detailed inquiry it was noticed by the AO that this changed method of valuation was adopted by the assessee only in two assessment years i.e. 91-92 and 92-93. Again in AY 93-94, the assessee itself has reverted back to its old method of valuation of closing stock. The frequent change in method of valuation of closing stock warrants the necessary inquiry about the intention of the assessee for doing these changes in valuation of closing stock and admittedly, it as rightly observed by the AO that had the method of valuation of closing stock of sugar not been changed, the assessee's profit would have increased by Rs. 1,68,71,980. Nothing is placed on record on behalf of the assessee to falsify these observations of the AO.

7. We have also carefully examined various judgments referred to by the parties and on its careful perusal, legal position has become more clear that the assessee has a right to make a change in the method of accounting including valuation of closing stock but this must be bona fide and be followed regularly in succeeding years. The assessee is not permitted to make the changes in the method of accounting or valuation of stock so frequently at his convenience to defraud the revenue. In the case of ABAD Fisheries Vs. CIT (supra) their lordships of the Kerala High court have categorically held that the change must be bona fide and changed method must be followed regularly. Change to mercantile system and change again to cash system in following year cannot be held to be a bona fide change because it was not followed regularly, During the course of hearing, the Id. Counsel for the assessee could not satisfactorily explain as to why he has reverted back to its old method of valuation in AY 93-94 and for what reasons now the assessee is submitting that the method adopted during the AY 91-92 and 92-93 must be followed in succeeding years after rejecting the method of valuation adopted by the assessee for valuing its stock for the AY 93-94. Our attention was invited to a judgment of the Bombay High Court in the case of Harinagar Sugar Mills Ltd. Vs CIT of which facts are quite identical to the present case.

8. In that case, the assessee was a limited company manufacturing sugar and in past closing stock of sugar was being valued at the market rate. In the previous year relevant to the AY 91-92, the

assessee valued the closing stock by bifurcating the closing stock into levy sugar and free sugar. The assessee, accordingly, valued its closing stock of levy sugar at Rs. 167/- per bag and free sugar at Rs. 177.90 per bag i.e. the cost price. The AO did not accept the changed method of valuation and this order of the AO was upheld upto the Tribunal and when the matter traveled to the High Court, the Hon'ble lordships of the High Court have held that all along in the past, the assessee was following its closing stock at market rate. It was only in the year under reference that the assessee found that if it valued the closing stock by bifurcating the stock into levy sugar and free sugar, it would be able to reduce its tax burden. Since the assessee could not produce any material on record to show the circumstances under which the assessee was obliged to bifurcate the closing stock in the manner it did, the Tribunal was justified in taking the view that there could be no bifurcation of stock of sugar and different valued could not be adopted by them. The facts of the present case are almost identical. Besides one additional factor does exist in the instant case is that in succeeding year i.e. AY 93-94, the assessee reverted back to its old method of valuation. Since nothing has been placed on record to prove that the change in method of valuation during the impugned assessment year is bona fide except the oral submission that this changed method is more scientific and rational, we have no hesitation in holding that the change in method of valuation is not bona fide and is not regularly followed. We therefore, do not find any infirmity in the order of the CIT(A). Accordingly, we confirm his order.

9. Ground no. 2 is not pressed. As such, we reject the same being not pressed.

10. Ground no. 3 relates to the depreciation on expenditure of Rs. 5,65,005.

11. We have heard the rival submissions and carefully perused the orders of the authorities below and documents placed on record. The facts in nutshell borne out from the record are that the AO has observed from the tax audit report that Rs. 11,83,210 was shown as capital revenue expenditure. Out of this, assessee claimed 100% depreciation at Rs. 8,37,373 being the cost of temporary erection. The AO examined the nature of expenditure in detail in his order in para no. 11 to 14 and observed that an expenditure of Rs. 2,37,675 is expenditure on purely temporary erection such as wooden structure on which 100% depreciation is allowable. The remaining expenditure of Rs. 5,65,005 Rs. 1,81,222 + 11,700 +3,24,783 + Td/ 24000+23,300 was incurred on aluminium partition, furniture and fixtures. Since it was not a temporary erection, the AO allowed 10% depreciation thereon. Aggrieved the assessee preferred an appeal before the CIT(A) with the submission that the aluminium material is very convenient to install and its cost compares favourably with wooden items of similar quality. In support of his contention, he has relied upon the case of Empire Jute co. 124 ITR 1 with the submission that it is essential to consider the nature of advantage in a commercial sense to know whether a particular expenditure is capital or revenue. The CIT(A) re-examined the issue in detail and after having examined the relevant provisions of the IT Rules, he confirmed the findings of the AO after holding that the anodized aluminium structures and doors and wall panellings cannot be termed as temporary erection.

12. Aggrieved, the assessee preferred an appeal before the Tribunal with the submission that entry I(4) of Appendix I of the IT Rules while talking of purely temporary erection such as wooden structures refers to wooden structures merely by way of an example. As such, the aluminium

partition, anodized aluminium structures should fall within the same category of temporary structure eligible for 100% depreciation. The Id. Counsel for the assessee further submits in the alternative that the entire expenditure on fixing of partition should be held to be in the nature of current repairs eligible for deduction while computing business income. In support of his contention, he placed reliance upon the following judgments :-

> Empire Jute Co. Ltd. Vs CIT 124 ITR 1(SC) CIT Vs Associated Cement Companies Ltd. 172 ITR 257 (SC) CIT Vs Chowgule & Co. (P) Ltd. 214 ITR 523 Instalment Supply (P) Ltd. Vs. CIT 149 ITR 52 (Del) ITO Vs. S.L. Batra 19 ITD 342 Nirula & Co. Ltd. Vs ITo 43 ITD(tm) 21 (Delhi) Rupin Investment & Trading (P) Ltd. Vs. ITO 38 ITD 428 J.K. Synthetics Vs ITO 32 ITD 775 (Delhi)

13. Ld. DR, on the other hand, has submitted that by claiming depreciation at 100% of these aluminium partitions and structures by treating it to be a temporary erection, the assessee itself has treated this expenditure as a capital expenditure and the same stand was taken by the assessee even upto the first appellate authority. Now, he cannot take a different stand by saying that these expenditures are in the nature of current repairs eligible for deduction while computing the business income. Ld. DR further contended that now the question before the Tribunal is whether modized aluminium structure and aluminium partition and doors and wall tunneling can be termed as a temporary erection on which 100% depreciation is allowable. To determine that nature of erection, one has to look into the nature of material used in erection. In the instant case, expenditures were incurred on anodized aluminium structures, aluminium partition, aluminium doors and wall panellings with has longer life than the wooden structure. The id. DR has also invited our attention to Rule 1 and 2 of Appendix I with the submission that wooden structures are generally called to be purely temporary erection because of its life span. Again, in sub-rule 2 under the head furniture and fitting, the depreciation is allowable at 10%. The Id. Dr further submitted that whatever the case law was referred by the assessee, they talk about the revenue and capital expenditure whereas in the instant case, the dispute is with regard to the nature of capital expenditure whether it is a temporary erection of falls under the head furniture and fitting.

14. Having considered the rival submissions and from a careful perusal of record, we find that the assessee has not claimed these expenditures as revenue expenditures in its book of accounts. In the tax audit report, assessee claimed it to be a temporary erection and claimed depreciation at 10%. Similar claim was raised before the CIT(A). But during the course of hearing, the assessee has raised a new claim that these expenditures should be treated as revenue expenditure and deduction of the same should be allowed while computing business income of the assessee. Since this issue requires proper verification whether the property was owned by the assessee or the expenditures are incurred in order to acquire enduring benefit, it cannot be entertained at this belated stage. We therefore, confine ourselves to the moot question whether the expenditures were incurred to raise a temporary erection entitling the assessee to depreciation at 100%. We have also carefully examined the judgement referred to by the parties but all these judgments are on the point of nature of expenditures whether it is capital or revenue. In Rule 1 of Appendix 1 of the Income Tax Rules, depreciation at 100% was allowed on temporary erection. Under the head temporary erection, the legislature has given an example of wooden structure. By giving an example of wooden structure, the

legislature makes it clear that if the life span of an erection is short, it should be called a temporary erection, otherwise it may fall under the head part of building or furniture and fittings on which depreciation at 10% is allowable. In the instant case, the assessee has incurred certain expenditure on wooden partition, on which depreciation was allowed at 100% but on aluminium erection, the Revenue has allowed depreciation at 10% only for the reason that life span of aluminium structure is more that the wooden partition. The adopted by the Revenue to determine the nature of erection does not appear to us to be unjustified or unreasonable. We, therefore, do not find any infirmity in the order of the CIT(A). Accordingly, we confirms his order on this court.

15. Ground no.4 relates to the disallowance of expenditure of Rs. 9100 on repairs at the residence of the employees as non-business expenditure.

Having considered the rival submissions and from a perusal of record, that the assessee has claimed an expenditure incurred on fixing side units at the residence of the Vice President of the company as per bill dated 20.10.90 of Eshwar Interiors as business expenditure but the AO had disallowed the same on the ground that this expenditure was incurred for non-business purposes. the assessee preferred an appeal before the CIT(A) but did not find favour with him. Now, it has carried the matter before the Tribunal with the submission that this expenditure was incurred at the of residence of the Vice President of the company. As such, it should be allowed as business expenditure.

16. During the course of hearing, a specific query was raised from the Id. Counsel for the assessee whether the residence was provided by the company to its Vice President as per the terms of appointment. If yes, whether it was the responsibility of the company provide furniture and fixtures in that residence and also to make maintenance of the house as per the terms of employment. Nothing was produced during the course of hearing on behalf of the assessee. Since the assessee failed to prove that the expenditures were incurred in terms of employment or in the regular course of business, we do not find any force in the claim of the assessee. We therefore, dismiss this ground of the assessee and uphold the order of the CIT(A).

17. Ground no. 5 relates to the disallowance of deduction of interest accrued but not due amounting to Rs. 21,15,615 on Sugar Development fund Loan taken but it was not allowed by the AO on the ground that according to letter dated 16.7.93 addressed to the assessee company by Industrial Finance Corporation of India Ltd, the repayment of SDF loan together with interest thereon is to be payable in five years instalments commencing from one year after the repayment of loans and interest thereon availed of from the specified financial institution in the modernization scheme or after 8 year period from the date of issue of cheque from the Govt. of India to IFCI whichever is earlier. Accordingly, the AO held that the interest accrued only on 18.11.96, as such it cannot be allowed in the relevant assessment year. The assessee preferred an appeal before the CIT(A) with the submission that as per the terms of loan agreement, the interest accrued from day to day though the same is to be repaid in instalments commencing from 1996. Since the assessee had been following the mercantile system of accounting he has claimed the payment of interest on accrual basis. he further placed reliance on Section 36(1)(iii) and 43(2) of the IT Act and emphasized that provisions of Section 43B(d) are not attracted at all. The CIT(A) re-examined the issue in the light of relevant

provisions of the I.T. Act and held that Section 43B begins with the word "Notwithstanding anything contained in any other provisions of this Act, a deduction otherwise allowable under this Act....." which means that reference to sections 36(1)(iii) and 43(2) by the assessee is irrelevant. He further held that Section 43B(d) clearly applies to the case of the assessee and according to this Section if interest is not paid, it cannot be allowed. Since as per the loan agreement the liability to pay interest would accrue only on 18.11.96, the AO has rightly disallowed the interest claimed by the assesee.

18. Now, the assessee has preferred an appeal before the Tribunal with the submission that Section 36(1)(iii) of the Act allows deduction for interest paid in respect of capital borrowed for the purpose of business or profession and as per Section 43(2), the word 'paid' means the actually paid or incurred according to the method of accounting on the basis of which profits or gains are computed under the head profits and gains of business and profession. Having regard to this definition of paid in Section 43(2) of the Act, deduction has to be allowed in respect of interest accrued even though not due whether the mercantile basis of accounting is followed by the assessee. he further contended that provisions of Section 43B(d) of the Act are not attracted since the interest is payable to the Govt. of India. which operates and controls Sugar Development fund and not to any financial institution.

19. Ld. DR on the other hand, has submitted that the Govt. always operates through its financing agencies and Section 43B sub-section (d) deals with the payment of interest on any loan or borrowings from any public financial institution or state financial institution or State Industrial Financial Corporation. As such, the payment of interest to IFCI cannot be called to be a direct payment to the Govt of India for taking the case out of the purview of Section 43B of the Act. He further submitted that Section 43B is a non-obstantie clause starting with "notwithstanding anything contained in the provisions of this Act". It means it has an overriding effect on other provisions of this Act and according to it deductions are otherwise allowable under this Act in respect of different payments given in sub-section a to of on payment basis. The Ld. DR further submits that since as per the agreement repayment of interest accrued thereon starts w.e.f. 18.11.98 the interest alone cannot be claimed to have been accrued during the impugned assessment year.

20. On consideration of rival submissions and from a careful perusal of referred, we find that admittedly, repayment starts w.e.f. 18.11.96 in 5 yearly installments as per the schedule along with interest accrued thereon. The agency involved in granting the loan is IFCI which itself is a public sector and financing agency though the loan was sanctioned through a govt. letter but that letter does not take away nature of advancement of loan from the purview of Section 43B of the Act because the loan agreement was executed between the assessee and IFCI. We have also carefully perused the relevant provisions of Section 36(1)(iii) and 43(2) of the Act and we find that payment of interest on borrowed capital is an allowable deduction but in the light of provisions of Section 43B payment of interest and the loan instalment to State Financial corporation is allowable only in those years in which such sum is actually paid. We have carefully examined the facts of the case in the light of legal provisions and we find that the assessee is only entitled to claim the payment of interest when it becomes due and not prior to that. In this background, we do not find any infirmity in the order of the CIT(A). Accordingly, we confirm his order .We have also examined the alternative plea of the assessee that the disallowance should be restricted to Rs. 9 lakh only being an interest

pertinent to the year but we do not find any force in the alternative plea because even this year, the repayment of lon with interest was not due and the assessee cannot raise a claim of payment of interest on accrual basis. We, therefore, uphold the finding of CIT(A) on this issue.

21. Ground no.6 relates to the disallowance of interest amounting to Rs. 15,54,540 on excess levy sugar price.

22. From a careful perusal of record on this issue, we find that the assessee has claimed in its revised computation filed during the course of assessment proceeding that a sum of Rs. 15,54,540 be allowed as interest payable on excess price of levy sugar price realized on the ground that the writ petition filed by the assessee in the High Court challenging the fixation of levy price was dismissed and the assessee was asked to pay half of the amount in monthly instalments by the Hon'ble Supreme Court of India on a stay petition of the assessee while staying the outstanding demand. The assessee further contended before the AO that the interest liability of the year i.e. Rs. 15,54,540 has been claimed as a liability of the year in the revised computation even though no entires in the books of accounts were made by the assessee. In support of his claim, it placed reliance upon the judgment of the Supreme Court in the case of Kedarnath Jute Manufacturing co. Ltd. Vs. CIT 82 ITR 363. The AO examined the claim of the assessee in the light of various judgments quoted before him and finally held that since the liability is not ascertained and determined in the year, it cannot be allowed as revenue expenditure. Accordingly, he rejected the claim of the assessee. The assessee preferred an appeal before the CIT(A) with the submission that as per the Supreme Court directions, the assessee was required to pay half of the amount which became due in 4 monthly installments with interest of 12.5% from the date of the order and for the balance amount, the assessee had to furnish a bank guarantee inclusive of interest on 12.5%. Since the assessee has complied with the directions of the Supreme Court, it raised a claim and its liability of payment cannot be treated as a contingent liability. The claim of the assessee was re-examined by the CIT(A) in the light of various judgements but he was not convinced with the explanation of the assessee and confirmed the disallowance after making the following observations :-

> "I have carefully considered the observations of the AO as well as submissions of the appellant. Since the Supreme Court while granting Leave Petition has ordered that interest @12.5% is to be only on the instalments payable in four months (which is half of the amount due) from the date of the order, the liability, if any, not only of the principal amount but also of the interest would depend on the final order and as such the claim of the appellant cannot be treated other than contingent. Since the Supreme Court has not passed any order in respect of interest from the date of collection upto the date of the order, when the point under reference is sub judice, the liability towards the interest cannot be said to have been crystalised. The AO has rightly distinguished the facts of this case from other case laws quoted by the appellant in paras 25 and 26 of her order. A perusal of the "Levy sugar Price Equalisation Fund Act" also shows that this Act states that the liability of interest arises only when there is final disposal of the proceedings of the court which in this case now is Supreme Court. The disallowance of interest liability is, therefore, upheld."

23. Now, the assessee has carried the matter before the Tribunal and reiterated his contentions. The Is. Counsel for the assessee further submitted that the Supreme Court had granted partial stay of recovery of the interest on the excess price realized and the same has become payable consequent to the dismissal of the writ petition by the Allahabad High court and as such, this liability cannot be treated as a contingent liability any more. He further submitted that the liability in respect of interest discrystallize in view of the decision of the Allahabad High court dismissing the assessee's writ petition and was not contingent upon final order of the Supreme Court. He further placed reliance upon the orders of the Tribunal in the case of India Coffee & Tea Distributing Co. Ltd. Vs Inspecting Assistant Commissioner 18 ITD 120 and D. Rajeshkumar & o, Vs ITO 20 ITD 89.

24. Ld. DR, on the other hand, has emphatically argued that the liability claimed by the assessee is not a statutory liability which can be claimed on its accrual. It is a contractual liability and whenever the contractual liability is disputed, it can only be claimed on its crystallization and quantification. In the instant case the High Court order was not accepted by the assessee and he preferred an appeal before the Hon'ble Supreme court and Hon'ble Supreme Court has stayed the demand with certain conditions. since the Supreme court is seized with the matter, the judgment of the Hon'ble High court cannot be called to be a final verdict on the dispute, on the basis of which liabilit7y can be crystallized and quantified. Since the impugned liability has not been crystallized and determined in the year in question, the assessee's claim of payment against the liability cannot be allowed.

25. In support of his contention, Id, DR has relied upon the following judgments :

> Kedarnath Jute Manufacturing Co. Ltd. 82 ITR 363 Madras Industrial Investment corporation Ltd. Vs CIT 225 ITR 802

26. Having considered the rival submissions and from a careful perusal of the record, we find that the impugned liability is admittedly a contractual liability and it can only be claimed on its accrual. Once the contractual liability is disputed, it can only be claimed on its crystallization or quantification. In the instant case, the present liability i.e. excess levy sugar price was disputed by the assessee by filing the writ petition before the High Court of Allahabad and it was into claimed during its pendency before the Hon'ble High Court. The Hon'ble High Court dismissed the writ petition but the verdict of the High Court was challenged by the assessee before the Hon'ble Supreme Court of India and the apex court was pleased to grant a partial stay subject to certain conditions which were complied with by the assessee. Since the assessee has challenged the verdict of the Hon'ble High Court and the Supreme court has not finally adjudicated the dispute, the liability cannot be called to have been crsytallized by the judgment of the Allahabad High Court. Had the assessee accepted the verdict of the Allahabad High Court and opted not to prefer an appeal before the Supreme Court, the liability would have been crystallized but when the assessee has chosen to prefer an appeal before the Hon'ble supreme Court the liability cannot be called to have been crystallized and determined on the basis of the verdict of the Allahabad High Court, since the liability being a contractual liability, is not crystallized in the year under account, it cannot be claimed have been accrued. We, therefore, do not find any infirmity in the order of the CIT(A). Accordingly, we confirm the same.

27. Ground no.7 is into pressed by the Id. Counsel for the assessee. We therefore dismiss the same.

28. Ground no.8 relates to the disallowance of entertainment expenditure. Having considered the rival submissions and from a careful perusal of record, we find that the AO has estimated the disallowance u/s 37(2A) of the Act at Rs. 14,80,175 against Rs. 12,76,373 surrendered by the assessee. Before the CIT(A), assessee claimed that 35% of the expenses are attributable to the employee's participation whereas the AO estimated it at 10%. The assessee has placed reliance upon the judgement of Delhi High Court in Expo Machinery Ltd. reported at 119 ITR in support of his contention that following the aforesaid judgment the CIT(A) has directed the AO to exclude 35% of such expenditure on account of employees participation from the purview of Section 37(2A). The CIT(A) has also directed the AO to allow Rs. 2500 as deduction pertaining to Diner's Club which is a fixed sum and paid as charges for the card for this club and in the nature of annual fee.

29. Aggrieved, the assessee has preferred an appeal before the Tribunal with the submission that the entire expenditure should have been allowed because the seminars were conducted for the assessee's employees only, therefore, it cannot be treated as entertainment expenses for the purpose of Section 37(2A) of the Act. In support of his contention, he relied upon the following judgements:-

> Sarda Plywood Industries Ltd. Vs CIT 238 ITR 354 CIT Vs Andhra Sugars Ltd. 225 ITR 118 CIT Vs. Indo Asian Switchgears (P) Ltd. 92 Taxman 86

30. The DR, on the other hand, has submitted that in tax audit report a sum of Rs. 12,76,373 was shown as entertainment expenses and the assessee itself has claimed the expenditure at 35% of the employees participation. In the light of categorical statement of the assessee, 100% expenditure cannot be treated as incurred on seminars conducted for the assessee's employees only.

31. On careful perusal of the record in the light of rival submissions, we find that the assessee itself has claimed 35% participation of its employees in all these seminars. On a careful perusal of the break-up of the expenses and material available on record, we find that the CIT(A) has already given proper directions to the AO to allow 35% of such expenditure on account of employee's participation. Since the CIT(A) has properly adjudicated the impugned issue and we do not find any infirmity therein, we use Id his order.

32. In the result, the appeal of the assessee is dismissed.