IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' DELHI
BEFORE SHRI K.G. BANSAL AND SHRI GEORGE MATHAN

I.T.A.No. 497(Del)/2008
Assessment year: 2004-05

National Fertilizers Ltd., Core-III, SCOPE Compex-7, Industrial Area, Lodhi Road, New Delhi. PAN-AAACN0189N	Vs.	Dy. Commissioner of Income tax, Circle 13(1), New Delhi.
(Appellant)		(Respondent)

Appellant by : S/Shri Ved Jain, B Mohan & Smt. Rano Jain, A.Rs
Respondent by : Shri S.S. Rathore, CIT, DR

ORDER

PER K.G. BANSAL :AM

This appeal emanates from the order of the CIT(Appeals)-XVI, New Delhi, passed on 28.12.2007. The corresponding order of assessment was framed by the Dy.CIT, Circle 13(1), New Delhi, under the provisions of section 143(3) of the Income-tax Act, 1961, on 27.11.2006.

2. Ground no. 2 is to the effect that on the facts and in the circumstances of the case, the learned CIT(A) erred in confirming the addition of Rs. 116,79,98,000/- on account of interest and litigation cost

etc. on protested advances given to M/s Karsan. In this connection it is mentioned in the assessment order that the auditors appended inter alia Note No. 5 to the accounts, which leads to a conclusion that the assessee did not offer income of Rs. 116,79,98,000/- for taxation, which accrued to it in this year and also crystallized during the year. This note was reproduced in the assessment order, which reads as under:-

"An advance of Rs. 130.69 crores was given to a foreign supplier i.e., M/s Karsan in 1995-96 against import of Urea, the supplies of which were not received and subsequently the contract was terminated. The company initiated Arbitration Proceedings in the International Court of Arbitration (ICA) which delivered the Award on 03.12.1998 in favour of company for US$ 40.69 millions along with simple interest @ 5% on the principal amount of US$ 37.62 millions w.e.f. 14.11.1995 till the date of payment. The Recovery Proceedings in pursuance of ICA Award are already underway against the identified assets in the name of M/s Karsan and its executives in various countries.

M/s Karsan had filed their counter claim during the ICA Arbitration amounting to US$ 33.63 millions and GBP 73,609.20 (INR 161.04 crores), which was rejected by ICA. The party challenged the Award in District Court at Amsterdam during March, 1999 which was rejected vide their judgment dated 12.12.2001, thus, making the Award enforceable. The party filed appeal against the judgment of District Court before the Dutch High Court which has also been rejected vide its judgment dated 22.1.2004. Company's Dutch Attorney has confirmed that M/s Karsan has not pursued the case further in the Dutch Supreme Court. The management does not foresee any counter claim,

liability consequent to any such claim, hence, no provision has been made.

The total amount recoverable from M/s Karsan including interest works out to US$ 56.45 millions plus EURO 13411.019 equivalent to Rs. 24647.22 lakhs as on 31.3.2004. However, as a conservative policy, the company did not account for income from interest and exchange fluctuation. Further, the Revenue reserves had been appropriated to the extent of provision made for such advance during 1996-97.

During 2003-04, US$ 225940 equivalent to Rs. 101.94 lakhs have been received in enforcement of Arbitral Award by M/s NFL against the foreign supplier, thereby reducing the advance from Rs.13069.19 lakhs to Rs. 12967.24 lakhs. Consequently, Revenue reserves have been increased to the extent of such recovery.

The remittance of the initial advance of US$ 380,000 equivalent to Rs. 132.01 lakhs representing 1% of the contracted amount was returned back and pursuant to the Court order dated 16.11.2000, such advance was to be kept in the interest bearing deposit. However, the bank prepared fixed deposit for US$ 291,840.43 with effect from 12.3.2001. Since the matter is sub-judice, the fixed deposit is under bank's custody by virtue of Court order as "case property". The interest accrued on the deposit along with exchange fluctuation has been recognized in the accounts."

In view of this note, the assessee was required to state as to why litigation costs and interest receivable from M/s Karsan should not be added to the total income returned by it. It was explained that non-recognition of income out of outstanding claims against M/s Karsan was based upon the conservative accounting policy, namely, to account any

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income when it was realized. In the case of M/s Karsan 99% of the advance given to it was outstanding even on 31.3.2006, i.e., even after lapse of two years from the close of this year. Therefore, the question of accounting such income will arise after recovery of the principal amount or on making the payment by M/s Karsan with a specific mention that such amount is paid towards the liability of interest or litigation costs. The explanation of the assessee was considered by the AO. It was pointed out that the assessee is following mercantile system of accounting, under which the income and expenditure are recorded in the books at the time of their occurrence and not at the time of receipt thereof. Thus, if any income accrues in a year, it has to be recorded irrespective of the fact that the same was received in the year or not. Similar considerations are applicable to the accounting of the expenditure. This principle was confirmed by Hon'ble Supreme Court in the case of Indermani Jatia Vs. CIT (1959) 35 ITR 298. Further, an income is said to accrue or arise when the right to receive the same becomes vested in the assessee, as held by Hon'ble Supreme Court in the case of CIT Vs. Ashokbhai Chimanbhai (1965) 56 ITR 42. An income can be said to accrue to an assessee when it is due and the postponement of the date of payment does not

effect the accrual of the income, as held by Hon'ble Supreme Court in the case of Morvi Industries Ltd. Vs. CIT (1971) 82 ITR 835. Coming to the facts of the case, it was pointed out that the interest and litigation cost had accrued to the assessee and had also been crystallized during the year under consideration. As per submissions of the assessee, the total amount recoverable from M/s Karsan was Rs. 246,47,22,000/-. The Dutch High Court had rejected the appeal of M/s Karsan on 22.1.2004 and thereafter it had not pursued the case any further in the Dutch Supreme Court. These facts show that the aforesaid amount had finally accrued to the assessee and the amount was crystallized in this year without pendency of any further dispute. Out of this amount, a sum of Rs. 129,67,24,000/- was the amount of principal, i.e., the advance given by the assessee to M/s Karsan. Therefore, the balance amount of Rs. 116,79,98,000/- accrued to the assessee on revenue account. It was further mentioned that while the entry for accrual of the aforesaid income was not made in the books, but that is not the essence of the matter. What is to be seen is whether the income has accrued to the assessee. Since the income had accrued to the assessee, the impugned amount was brought to tax as the income of this year.

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3. The matter was agitated in appeal. Detailed submissions were made before the learned CIT(A). In view of certain further developments, additional evidence was also filed before the learned CIT(A). It was pointed out that on 14.7.2004, M/s Karsan applied to the court of appeal in Amsterdam to suspend the execution of the award. However, this application was withdrawn on 26.10.2004. On 21.7.2004, M/s Karsan had moved a petition in the Court of Appeal in Amsterdam for the revocation of the award. This petition was dismissed by the Court of Appeal on 14.12.2006. The assessee had filed an application in the Competent Court in Monaco for the enforcement of the award, which was dismissed. These evidences were admitted and report of the A.O. was also obtainted. The learned CIT(A), after considering the facts made before him by the assessee , summarized them as under:-

i) the arbitration award delivered on 3.12.1998 had not become final in this year as it was under further challenge by M/s Karsan and the litigation in this matter came to an end only on 14.12.2006;

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ii) the assessee's petition for passing a decree in its favour was pending before Chief Judge, City Civil Court, Hyderabad;

iii) the Arbitration Award was not a decree, but it will become so when it is so decreed by the Court and only thereafter the award becomes enforceable against M/s Karsan; and

iv) the assessee was not able to cover even the principal amount and, therefore, no real income accrue to the assessee in respect of interest and litigation costs.

3.1 Coming to the legal issues, it was pointed out that the case law relied upon by the AO was not applicable on the facts of the case of the assessee. On the other hand, reliance was placed on the decision in the case of Fazilka Electric Supply Co. Ltd. Vs. CIT, 143 ITR 551 (Del); APS Cold Storage and Ice Factory Vs. CIT, 119 ITR 709 (All); UCO Bank Vs. CIT, 237 ITR 889 (SC) and Godhra Electricity Co. Ltd. Vs. CIT, AIR 1997 SC 2350.

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3.2 In the alternative, it was argued that even if it is taken that the impugned income had accrued to the assessee, it cannot be taxed in one year and it should be taxed in each year of its accrual.

3.3 The learned CIT(A) forwarded the additional evidence filed before him to the AO for his comments, which were received and made known to the assessee. After considering rival submissions, it was mentioned by him that there is a clear distinction between accrual of income and the receipt of income. The assessee was following mercantile system of accounting and, therefore, the income in its case has to be recognized on accrual basis i.e., it is to be recognized when the legal right to receive the income gets vested in it irrespective of the fact that the amount was received or not. In this connection, he referred to the decision in the case of Ashokbhai Chimanbhai; Morvi Industries Ltd. (supra); CIT Vs. Shoorji Vallabhdas & Co. and CIT Vs. Shri Goverdhan Ltd., 69 ITR 675. On the basis of these judgments, it was pointed out that there is a constant legal refrain that under mercantile system of accounting, the income has to be taxed at the first instance, namely, when a legal right to receive the same gets vested in the assessee. The subsequent non-receipt or waiver thereof will not

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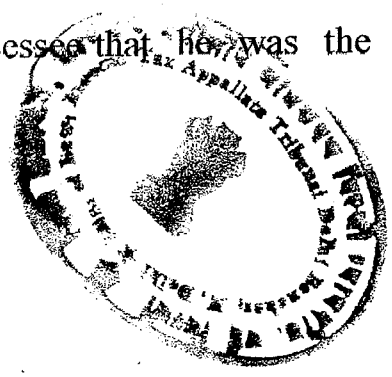
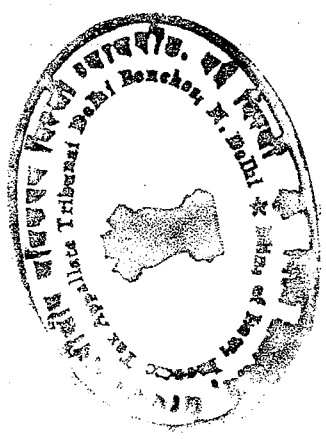
effect the accrual of the income. Coming to the facts of this case, it was mentioned that the Arbitration Award obtained finality on 22.1.2004, when M/s Karsan did not challenge the judgment of the High Court in the Supreme Court at Amsterdam. This was the point of time when the legal right to receive the interest and litigation cost got vested in the assessee on 22.1.2004. Therefore, it was held that the income had accrued in this year. He also discussed various other litigations, but he was of the view that such litigations did not effect the right of accrual of the income to the assessee. It was pointed out that the order of the Court in Monaco dated 28.11.2005 was dismissed for the reason that original and authenticated copy of the Arbitration Award was not filed. This did not affect the right of the assessee to claim interest and litigation cost from M/s Karsan. The assessee initiated criminal proceeding against M/s Karsan regarding criminal breach of trust, which was decided on 1.6.2006. This only showed that the assessee was vigorously following all remedies, which strengthened its case but did not affect its right in any manner under the Arbitration Award. The Chief Judge, City Civil Court, Hyderabad, was occupied with Executive Petition No. 57 of 2003. In this petition, it was the claim of the assessee that he was the decree holder and, therefore, the



Arbitration Award was at par with the decree of a Competent Authority. In view of these facts, it was held that the right to receive the money had been finally vested in the assessee when M/s Karsan did not pursue the matter any further in Dutch Supreme Court, which happened in this year. Coming to the other argument, namely, that the assessee had not even received the principal amount and, therefore, there was no question of accrual of interest and litigation income, it was mentioned that the income has to be accounted on accrual basis in mercantile system of accounting. In this system, the assessee also has a right subsequently to claim the deduction when it is felt that the amount is not recoverable. In such a situation, it may be written off from the books of account by claiming the deduction as bad debt. It was also held that the issue of real vs. notional income was decided by the courts on altogether different facts. The assessee had also argued that interest and litigation cost should be taxed not in one year but in the years of their accrual. This argument was rejected by holding that the amount is being taxed on the basis of accrual and crystallization of the income, which happened in this year. Thus, the addition made by the AO was sustained.



4. Before us, the learned counsel for the assessee furnished in brief the background facts of the case. It was stated that the assessee had placed an advance of about Rs. 133 crore with M/s Karsan for import of urea in the year 1995-96. M/s Karsan did not ship the goods to the assessee because of its fraudulent intention. Therefore, as per terms of the agreement, the matter was referred for arbitration in the ICA. The assessee had made a provision of the impugned amount of about Rs. 133/- crore in the year 1996-97. The Arbitration Award was received on 3.12.1998, which was in favour of the assessee. In terms of the award, the assessee was to receive US$ 40.69 millions along with interest @ 5% p.a. on the principal amount of US$ 3.62 millions with effect from 14.11.1995 till the date of payment. M/s Karsan challenged the award in the District Court at Amsterdam in March, 1999, which was rejected on 12.12.2001. Thereafter, M/s Karsan filed appeal against this judgment before the Dutch High Court, which was also rejected on 22.1.2004. The assessee's Attorney in Netherland confirmed that M/s Karsan had not pursued the case further in the Dutch Supreme Court. As a consequence of this, the management of the assessee company came to the conclusion that there would be no counter claims against the assessee in respect of the award. Accordingly, it was mentioned in Note

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No. 5, that no provision has been made in the accounts for any liability on account of counter claim. The case of the learned counsel was that this note was mis-read by both the lower authorities, thereby leading to incorrect conclusion in regard to the accrual of income in respect of interest and litigation costs. The facts are that M/s Karsan did not file any counter claim against the award because of which no provision was made in the accounts in respect of such a claim. However, that did not mean that the award became a finally enforceable decree in favour of the assessee. Thus, the learned CIT(A) erred in holding that the right to receive interest and cost accrued to the assessee as per award on 22.1.2004 as the dispute ended on that day. Thereafter, the learned counsel for the assessee furnished his argument against the order of the learned CIT(A), which are summarized as under:-

(i) the appeal of M/s Karsan against the arbitration award was finally disposed off on 14.12.2006 when the petition for revocation of the award was dismissed by the Court of Appeal. This did not happen in this year but subsequently and till such disposal even the award had not become final;

(ii) the arbitration award was not was not a decree enforceable against M/s Karsan as per decision of Hon'ble Delhi High Court in the case of Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd., 1999 (1) Arb. LR 571, in which it was pointed out that the satisfaction of the court as contemplated u/s 49 can be arrived at only after the court is satisfied that none of the grounds, as mentioned in section 48(2) of the Act, exists and that if an objection is filed, as contemplated u/s 48(1) of the Act by the party, is dismissed. It is only after that satisfaction which is required to arrive at by the Court u/s 48 that the foreign award is enforceable is reached and recorded, then only the award becomes a deemed decree of the court. The aforesaid provision postulates or pre-supposes that in order to arrive at the aforesaid satisfaction, the court itself has the responsibility to scrutinize the award even in absence of an objection by a party to come to a satisfaction that the award does not suffer from any of the vices as mentioned in section 48(2). When it is found that none of the conditions as mentioned in the said provision are attracted, the court would explicitly record its satisfaction that the award has become

enforceable and then only and thereupon the award becomes decree of the court. It was also mentioned that the said foreign award per se cannot said to be final and binding so long as it is not held as enforceable and does not become a deemed decree by virtue of the provisions of section 49 of the Act;

(iii) the learned CIT(A) failed to distinguish between civil and criminal proceedings undertaken in this case and wrongly came to the conclusion that since the assessee was vigorously pursuing proceedings in regard to criminal breach of trust, it led to the conclusion that the amount of interest and litigation cost had accrued to the assessee. In the case of M/s Fazilka Electric Supply Co. Ltd. Vs. CIT (1983) 143 ITR 551, Hon'ble Delhi High Court held that the award of an arbitrator, which has not been filed in the court and made a rule of the court, has no force or validity. It does not create, extinguish or pass any title or interest and no one can rely on such an award by way of an attack or defence in any proceedings

whatsoever. In fact, the parties are not even barred from filing suit on original cause of action; and

(iv) the advance made to M/s Karsan was shown as doubtful in the balance-sheet and it remained so for more than 10 years. When even the principal amount was not recovered, there was no question of accrual of interest income or litigation costs. In the case of Space Financial Services Vs. ACIT, the Tribunal in ITA No. 2002(Del)/2005 for assessment year 2000-01 dated 14.9.2007, a copy of which was filed before us, pointed out that there was no possibility of recovery of loan of Rs. 1,70,70,000/- from SFL and ASTIL and the amount has been allowed as bad debt because the same has been written off as there was no hope of recovery despite legal suit pending against them. In such a situation, it was held that even if the assessee could have provided for the penal interest, the same was liable to be written off as irrecoverable. Therefore, the lower authorities were not right in making addition of Rs. 3,41,400/- on account of penal interest on accrual basis.

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5. In reply, the learned DR referred to the findings of the learned CIT(A) in paragraphs 5.10, 5.11 and 5.12, which have been summarized by us, but which are reproduced below for the sake of ready reference:-

"5.10 The cumulative reading of the above makes it very clear that the damages awarded to the appellant under the Arbitration Award became a decree of the court of competent jurisdiction at Amsterdam, legally enforceable anywhere in the world as per the relevant laws of different nations. This decree and so the right to receive damages became a crystallized right when the process of appeals started by M/s Karsan ended by the decision of High Court at Amsterdam on 22.1.2004 against which M/s Karsan did not file any further petition. Therefore, the finality of the matter so far as decree of award is concerned had reached on 22.1.2004. The subsequent events brought on record by the appellant do not alter substantially the basic right being vested in the appellant. The reliance placed by the appellant on various laws in respect of enforcement of foreign awards do not help the appellant as the facts of the present case are very different from the said cases because in those cases, the Arbitration Award itself was being sought to be executed, without a formal decree of any court of law. In the present case, the appellant had applied for a decree in its favour and the same was passed by the District Court at Amsterdam, Third Court of Three Judges at Amsterdam. The said decree was subsequently duly confirmed by the Hon'ble High Court at Amsterdam. In these circumstances, the reliance placed by the appellant on various case laws is misplaced.

5.11 The other argument of the appellant is that [illegible] only notional right. This argument needs to be rejected because difficulty in recovering part of an amount cannot [illegible] income

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into notional. The appellant is pursuing the recovery in right earnest and properties belonging to M/s Karsan or its representative are under attachment etc. Therefore, to say that difficulty of recovery is sufficient to convert real income into notional one is not accepted. The income should, as per mercantile system, be received at first instance of right to receive. The appellant always has a right subsequently to claim deduction as and when it feels that debit has become irrecoverable and is written off from books of accounts. The case laws cited by the appellant in its favour of argument of real vs. notional income were given in a different set of facts and are not applicable.

5.12 The last argument of the appellant that interest and costs should be taxed in each of the year comprised in the period for which it was granted rather than in this year. This argument is also liable to be rejected because the right to receive income itself got vested and crystallized in the previous year relevant to this assessment year, as discussed above, therefore, income only accrued and got crystallized in the present assessment year. Therefore, the argument of the appellant is without merits."

6. We have considered the facts of the case and rival submissions. The facts are that the assessee had placed an advance of Rs.133.69 crore with M/s Karsan in the year 1995-96 for import of urea. The supplies were not received and subsequently the agreement was terminated. The agreement contained an arbitration clause, in view of which arbitration proceedings were initiated by the assessee in the ICA. The court delivered its judgment on 3.12.1998 in favour of the assessee to the effect that the assessee was entitled to receive the aforesaid

advance from M/s Karsan along with interest @ 5% p.a. on the principal amount w.e.f. 14.11.1995 till the date of the payment. The assessee was also entitled to receive litigation charges from M/s Karsan. The recovery proceedings were started in pursuance of the award against M/s Karsan and its executives in various countries. However, they had filed counter claim amounting to Rs. 161.04 crore. This claim was rejected by the ICA. The award was also challenged in the District Court at Amsterdam in March, 1999, which was rejected by the District Court on 12.12.2001. In the note to the account, it was mentioned that the award became enforceable on receipt of judgment of the District Court on 12.12.2001. However, an appeal was filed against this judgment before Dutch High Court. The appeal was rejected by the High Court on 22.1.2004. The assessee's attorney confirmed that M/s Karsan thereafter did not pursue the case in the Dutch Supreme Court and in view thereof, the management of the assessee company came to the conclusion that there was no further possibility of any liability arising as a consequence of counter claim. The case of the lower authorities is that since the dispute came to an end on 22.1.2004, the income accrued to the assessee on that date in respect of interest and litigation costs. On the other hand, the case of the assessee is that the judgment of the Dutch High Court

merely put an end to the counter claims which could have been pursued by M/s Karsan. That does not mean that the award became enforceable on 22.1.2004 for the reason that the award does not become enforceable till it is made the rule of the court, which did not happen in this year. The assessee brought certain further facts to the notice of the learned CIT(A), which were considered by him. The facts are that the award dated 3.12.1998 did not become final as it was under challenge by M/s Karsan and the litigation in this regard came to an end on 14.12.2006. Further, the assessee had applied before the Competent Court of Monaco for the execution of the award, which was rejected because the application was not complete in all respects. The assessee had also filed petition before the City Judge, Hyderabad, to pass a decree in its favour on the basis of the award and the decision of the court is pending. Thus, the facts are that although the award was given in favour of the assessee on 3.12.1998, the litigation came to an end only on 4.12.2006, much after the close of this previous year. The award did not become the rule of any court in this previous year. Keeping in mind these facts, we may discuss the cases relied upon by the revenue and the assessee in succession.

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6.1 The revenue had relied on the decision of Hon'ble Supreme Court in the case of Ashokbhai Chimanbhai (supra). The facts of that case are that the karta of a Hindu Undivided Family held on behalf of the family a share of five annas in the rupee in profits and loss of a firm, whose accounts were to be adjusted at the end of the calendar year. The HUF was partitioned on 12.11.1955 and the assessee was allotted the five annas share in the firm. Consequently, he became the full fledged owner of the income by way of share in profits of the firm. The question was whether any part of the income from the firm for calendar year 1955 was liable to be included in the income of the family? The determination of the question involved the time of accrual of profits to individual partners in the firm. The court came to the conclusion that the date when Ashokbhai acquired the right to receive the share of profit, there was no subsisting joint family and his share of profit was not received by him on behalf of the assessee. Therefore, it was held that no part of the profits could be taxed in the hands of the family. It was also pointed out that under the Income-tax Act, income is taxable when it accrues, arises or is received or when it is by fiction deemed to accrue, arise or is deemed to be received. Receipt is not the only test of chargeability to tax; if income accrues or arises, it may

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become liable to tax. In the case at hand, the profit had to be adjusted at the end of the year and the profit for calendar year 1955 could not be adjusted before 31.12.1955. On 31.12.1955, the Hindu Undivided Family was not in existence. Therefore, it was held that profit accrued to Ashok Bhai on 31.12.1955. Having considered the ratio of this case, it cannot be straightway said that the income accrued to the assessee on 22.1.2004 when the assessee's attorney confirmed that M/s Karsan did not pursue the matter further in Dutch Supreme Court. The fact is that the litigation came to an end on 14.12.2006 when the application for suspension of the award was dismissed by the Court of Appeal.

6.2 The revenue also relied on the decision of Hon'ble Supreme court in the case of Morvi Industries Ltd. (supra). The facts of that case are that the assessee was the managing agent of its subsidiary company and was entitled to receive office allowance of Rs.1,000/- p.m., commission @ 12.5% on the net profit of the managed company and an additional commission of 1.5% on all purchases of cotton and sale of cloth and yarn. The assessee maintained its account on mercantile method. In the two years ended on 31.12.1954 and 31.12.1955, the

managed company suffered losses and, thus, commission was earned only in respect of sale of cloth and yarn for these two years. Under the agreement, the managing agency commission became due to the assessee on 31.12.1954 and 31.12.1955, which was payable immediately after passing of the accounts of the managed company in the general meetings, which were held on 24.11.1955 and 21.7.1956 respectively. The assessee relinquished the commission on sales and also the office allowance after it had become due but before it had become payable under the agreement, for the reason that the managed company suffered losses. The question was, whether the amount foregone by the assessee could be included in the total income for the two accounting years? The Hon'ble Court pointed out that under mercantile system of accounting, credit entries are made in respect of amounts due concurrently when they become legally due and even before they are actually received. Similarly, the expenditure is debited on becoming legally due, though it may be disbursed later on. There could be exceptional cases where only a hypothetical entry is made for the income which does not materialize. Applying the aforesaid principle, it was held that the income was given up unilaterally by the assessee after it had accrued to it. Therefore, the assessee could not escape the

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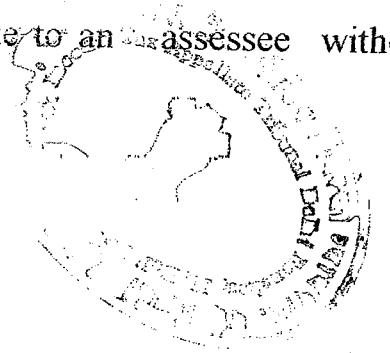
tax liability. The case before us is not one of foregoing of income after it became one. Thus, the facts are distinguishable. The real question before us is whether the income accrued to the assessee on 21.1.2004 on receiving the information that M/s Karsan did not pursue the matter in Dutch Supreme Court, in a situation when there was further litigation in the matter, which came to an end on 14.12.2006? We are of the view that the ratio of the case discussed above, does not lead to a conclusion that interest and litigation charges definitely accrued to the assessee on 22.1.2004.

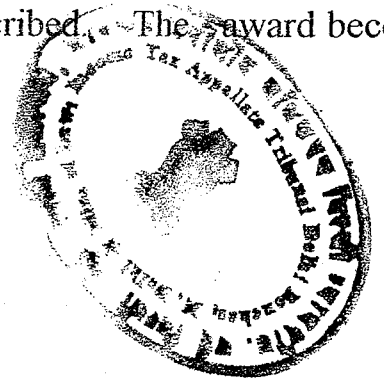
6.3 The revenue also relied on the decision of Hon'ble Supreme Court in the case of Shri Goverdhan Ltd. (supra). The facts of the case are that the assessee derived income from its own business as well as income by way of share in the profits of a firm. The question before the Court was regarding accrual of income by way of share of profit in the firm for the period 1.10.1950 to 31.3.1951. The case of the assessee was that this income was not known to the assessee before its general meeting held on 17.5.1951. The Hon'ble Court pointed out that it is a well established proposition of law that the income may accrue to an assessee without its actual receipt. If the assessee



acquires a right to receive the income, it can be said to have accrued to him though it may be received later on, when it is ascertained. The legal position is that a liability depending upon a contingency is not a debt in praesenti or in futuro till the contingency happens. But if it is a debt, the fact that the amount has to be ascertained does not make it any the less a debt if the liability is certain and what remains is only a quantification of the amount. Having considered this decision, we are of the view that it is not on all fours with the facts of the case of instant assessee. As pointed out earlier, the question is whether, on receipt of information from the attorney that M/s Karsan did not pursue the matter in the Dutch Supreme Court, the income by way of interest and litigation charges accrued to the assessee? This will depend upon the fact whether the right to receive, in the sense of a legally enforceable right, came into existence in favour of the assessee. The case of the assessee is that an award is not a decree and, therefore, no enforceable right got vested in the assessee on 22.1.2004.

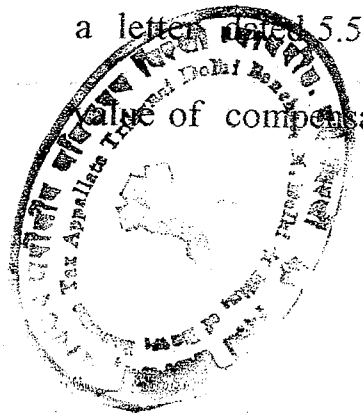
6.4 We may now examine the cases referred to by the assessee. The first and the foremost case is the decision of Hon'ble Delhi High Court in the case of Fuerse Day Lawson Ltd. Vs. Jindal Exprots Ltd. In

that case, the petitioner filed an execution petition construing the arbitration award to be a decree. The Hon'ble Court pointed out that the provisions for enforcement of a foreign award, however, specifically state that only when the court is satisfied and hold that the award is enforceable, then and then only the award would be deemed to be a decree of that court. Therefore, so long the process of recording the satisfaction that the award is enforceable is not complete, the same does not become a decree and, therefore, cannot be executed as if it was a decree. It was further pointed out that the foreign award per se cannot be said to be final and binding so long as it is not held as enforceable and does not become a deemed decree by virtue of the provisions of section 49 of the Act. Coming to the facts of instant assessee, it is an admitted position that the Court of Monaco rejected the application of the assessee to pass a decree in its favour. Similar proceedings were pending in the City Civil Court at Hyderabad. Thus, no competent court recorded the satisfaction u/s 49 to make the award as a deemed decree. Filling the form before the court showing the assessee to be a decree holding cannot lead to a conclusion that a decree was passed in its favour for the reason that the forms are so prescribed. The award becomes enforceable only when it becomes the



rule of a competent court, which did not happen in this year. Therefore, we are of the view that this case supports the argument of the ld counsel that the award did not become enforceable in this year and, thus, there was no accrual of income under mercantile system of accounting.

6.5 The assessee also relied on the decision of Hon'ble Delhi High Court in the case of Fazilka Electric Supply Co. Ltd. (supra). The facts of the case are that the assessee was a licensee under the Punjab Electricity Supply Act. This business was taken over by the Government of Punjab on 23.7.1949, in pursuance of proceedings u/s 7(1) of the Indian Electricity Act, 1910. The proceedings in this regard were started on 13.3.1947 when Secretary to the Government of Punjab issued a letter to the assessee to the effect that the Government had decided to purchase the electricity supply undertaking under clause 9(1) of the license granted to the assessee. Compensation of Rs. 3,17,691/- was fixed as payable to the assessee. The assessee did not agree with the amount of compensation and agitated for its increase. Accordingly, a letter dated 5.5.1952 was written to the Secretary placing the correct value of compensation at Rs. 10,80,000/-. The assessee also hinted at



arbitration in case its valuation was not accepted and suggested the name of the arbitrator in the matter on its behalf. There was delay on the part of the Government in appointing its arbitrator and, thus, the assessee's arbitrator became the sole arbitrator of the case. However, his appointment was set aside by the court. Thereafter, the Government nominated its arbitrator and the arbitration proceedings continued till 17.4.1961, but no final conclusion was reached about the proper valuation of the assets of the undertaking. On 25.4.1961, the parties referred the dispute to Shri Mehar Chand Mahajan as an Umpire, who determined the value of the undertaking at Rs. 6,25,000/- to which solatium of 20% was added on account of compulsory purchase. The assessee had also agitated for payment of interest. Looking to the fact that it had already been paid a sum of Rs.3,17,691/-, interest on balance amount of Rs. 4,32,309/-was allowed @ 4.5% for 8 years, which worked out to Rs.1,55,623/-. Thus, the assessee became entitled to receive a total sum of Rs. 5,87,927/- under the award. On 23.11.1961, an application was made to the court to make the award of the Umpire a rule of the court. This was done on 28.9.1962. The entire interest was paid to the assessee through the court on 13.2.1963. In the context of aforesaid facts, one of the

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questions before the Hon'ble Court was whether, on the facts and in the circumstances of the case, was the Appellate Tribunal justified in holding that the sum of Rs. 1,55,628/- is the income of the assessee liable to be taxed in the assessment year 1963-64? The finding of the court was that an award of an arbitrator that is not filed in the court and made a rule of court has no force or validity. It has no effective value and it cannot create, extinguish or pass any title or interest. In this connection, we would like to reproduce one paragraph from pages 158 and 159 of the judgment, which reads as under:-

"Even if it could be said that this question is comprehensive enough to raise the point now sought to be raised by the learned counsel, the Tribunal declined to refer this question as well as another question posed by the assessee relating to its method of accounting and the assessee has not pursued the matter further under section 256(2). This aspect of the matter has, therefore, not been referred to us and it is not open to the assessee to raise the issue before us. Secondly, even on the merits, the plea is not tenable. An award of an arbitrator that is not filed in Court and made a rule of Court has no force or validity. It has no effective value and it cannot create, extinguish or pass any title or interest. Nobody can rely on such award by way of attack or defence in any proceeding whatsoever. Indeed, in such a case, the parties are not barred even from filing a suit on the original cause of action. No party can be prejudiced or benefited by the mere existence of such an award. It may be that effect can be given to the award if both parties consent to abide by its terms. But that will be on the ground that the parties have by mutual agreement settled a dispute between themselves and perhaps in that situation the

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liability can be said to have been admitted and so to have accrued when the award is given. But where proceedings are taken under section 14 of the Arbitration Act, 1940, the position is different. In such a case, until the proceedings in Court conclude, the award as such is unenforceable. Moreover, when the award is filed into Court and a decree on its terms sought, it is open to the Court to consider it in all its aspects. The Court can set aside, modify or remit the award for fresh consideration and it cannot be taken for granted that the Court will make a decree on its terms. We are, therefore, of opinion that the assessee did not get an enforceable right (which is what is material for purposes of accrual) until the award had been made a rule of the Court, This is also the view taken by the Allahabad High Court in A.P.S. Cold Storage & Ice Factory v. CIT [1979] 119 ITR 709. We uphold the view taken by the Tribunal on this point."

It was also held that if the subject matter is considered as to the assessee's entitlement to a particular amount, which has been awarded to him, such entitlement clearly can be said to have crystallized only on the date on which the amount is awarded to him finally, i.e., when no dispute possible in regard thereto persists. In this connection also, we would like to reproduce one paragraph from pages 572 and 573 of the judgment, which reads as under:-

"The above survey of the decisions shows a clear cleavage of opinion between the High Courts on this issue. All the decisions have applied the principles regarding accrual as enunciated in Sassoon's case (supra) and CIT v. A. Gajapathy Naidu [1964] 53 ITR 114 (SC), viz., that income accrues at the point of time when a right to receive that income is created in the assessee. If we view the subject-matter of taxation in the abstract of the compensation or interest thereon, receivable by an assessee

when his property is taken away, then clearly the right to compensation or interest thereon will arise as from the date of dispossession both under the relevant statutory provisions as well as the earlier provisions in the Constitution which prohibited the deprivation of property without compensation. But if we consider the subject-matter as the assessee's entitlement to a particular amount which has been awarded to him, such entitlement clearly can be said to have crystallised only on the date on which the amount is awarded to him finally with no dispute possible in regard thereto. The former view proceeds on the principle that where a right clearly exists, the delay in quantification or even a dispute regarding the same is immaterial and irrelevant: a principle settled beyond doubt in regard to accrual of liabilities by the decision of the Supreme Court in Kedarnath Jute Mfg. Co. Ltd. v. CIT [1971] 82 ITR 363. The latter proceeds on the view that as long as it is not known and cannot be stated with any certainty whether any enhanced compensation at all would be given or whether, even if it is given by the District Court or the High Court, it will ultimately be sustained, it would be futile and impractical to talk of any income having accrued."

Thus, two propositions of law emerge from this decision regarding arbitration award made within the territories of India, namely, that –(i) the assessee becomes entitled to the amount only when no dispute remains in regard thereto and the award had become final, and (ii) the award attains enforceability only when it is made a rule of court. From the decision in the case of Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd. (supra), it becomes clear that the position of a foreign award is no different from the position of an Indian award. Therefore, the aforesaid

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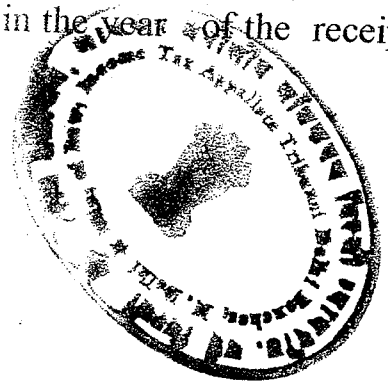
legal propositions are applicable in respect of a foreign award also. Coming to the facts of this case, it is seen that the litigation with M/s Karsan ended on 14.12.2006. Thus, it can be said that on this date, the award became final. This date does not fall in the year under consideration, but is far removed in future from 31.3.2004. Further, the award was not made a rule of the court either at Monaco or Hyderabad in the current year. Therefore, none of the conditions mentioned above was satisfied in this year. The learned CIT(A) also mentioned that the assessee was vigorously pursuing cases in respect of criminal breach of trust. This, to our mind, has no implication in respect of accrual of income in this year. Accordingly, we are of the view that no enforceable right was vested in the assessee in this year, which could lead to the conclusion that interest income and litigation charges accrued to the assessee.

6.6 It was also the case of the learned counsel that the assessee has not received the principal amount even after lapse of about 11 years. In such circumstances, the assessee adopted a conservative policy regarding accrual of interest and litigation charges, i.e., to book the same in the year of the receipt. This policy was in conformity with the



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mercantile system of accounting, as held by the Hon'ble Supreme Court in the case of UCO Bank Vs. CIT (1999) 237 ITR 889. The question before the court was whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in canceling the order u/s 263 of the Act, holding that when the assessment was completed, the only paper available was Board's circular dated October 9,1984 and, therefore, it cannot be said that the Inspecting Assistant Commissioner's order of assessment in not taxing interest suspense of Rs. 49,15,435/- in view of that circular was erroneous and prejudice to the interests of the revenue? The assessee was following mercantile system of accounting. However, the income by way of interest pertaining to doubtful loans was not considered as real income in the year in which it accrued, but only when it was realized. In order to support its case, the revenue has placed reliance on the decision in the case of Kerala Financial Corporation Vs. CIT (1994) 210 ITR 129 (SC) and State Bank of Travancore Vs. CIT (1986) 158 ITR 102 (SC), in which it was held that the interest which had accrued on sticky advances had to be treated as income of the assessee and taxable as such. If the advance takes the shape of a bad debt, refund of tax paid on the interest would become due, and the same can be claimed by the assessee in accordance

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with law. The Hon'ble Court pointed out that it was not in agreement with the said decision. The relevant circular of the Central Board cannot be ignored. The question is not whether a circular can over-ride or detract from the provisions of the Act. The question is whether the circular seeks to mitigate the rigor of a particular section for the benefit of the assessee in certain specified circumstances. So long as a circular is in force, it would be binding on the departmental authorities, in view of the provisions of section 119 to ensure a uniform and proper administration and application of the Act. Thus, the question was answered in favour of the assessee and against the revenue. The learned counsel also relied on the decision of the Tribunal in the case of Space Financial Services (supra), in which it was held that after careful consideration of the issue, it is found that there is no possibility of recovery of loan of Rs.1,70,70,000/- from SFL and ASEIL. In view thereof, the claim of bad debt in this regard was allowed as the amount was written off in the books of account. In view thereof, it was further held that the penal interest on that amount was also liable to be written off as irrecoverable. Therefore, the question of providing for penal interest did not arise. Accordingly, it was held that the lower authorities were not correct in making the

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addition of Rs. 3,41,400/- on account of penal interest on accrual basis. We have considered these submissions of the learned counsel. We find that the real issue in the case of UCO Bank was regarding the applicability of the circular of the Board in respect of interest on sticky advances in respect of banking companies. The circular dated 9.10.1984 instructed that interest in respect of doubtful debts credited to suspense account by banking companies would be subject to tax, but interest charged in an account, where there has been no recovery for three consecutive years, would not be subject to tax in the fourth year and onwards. It was also provided that if there was any recovery in the fourth or a later year, the actual amount recovered would be subject to tax in the respective year. The decision of the Hon'ble Supreme Court was that the circular lessened the rigors of the statutory provision. Since the circular was issued in respect of assessment of banking companies, the same is not applicable to the case of the assessee. However, it is also a fact that the assessee has not provided for the interest in the books of account by following conservative accounting policy. Thus, the facts are distinguishable. In the case of Space Financial Services (supra), the Tribunal had allowed the loan as bad debt and consequently it came to the conclusion that even if interest

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had been provided, the same was liable to be written off. Thus, it was also held that interest income did not accrue to the assessee. In the case at hand, the assessee has not written off the principal amount. Therefore, the ratio of this case is also not applicable. However, we are of the view that since principal amount has not been recovered over a long period, there is no possibility as of now for the recovery of the interest and litigation cost awarded to the assessee. No legal right has been created in favour of the assessee as the award has not been made a rule of the court. In such circumstances, the assessee was right in not providing for the interest in the books of account.

6.7 The learned counsel also argued that the interest and the litigation costs did not pertain to one year and, therefore, the whole of the amount could not have been taxed in the assessment of this year only. It is clear from the award that the interest was granted at 5.5% p.a. and, therefore, the interest pertained to various years. However, the details of litigation charges have not been filed by the assessee. Therefore, we are not in a position to furnish any final finding in this matter.

6.8 In the result, ground no.2 is allowed.

7. Ground no. 3 is against the finding of the learned CIT(A), in which he upheld an addition of Rs. 24,43,49,000/- on account of the valuation of the closing stock. In this connection, it is mentioned in the assessment order that on perusal of Note no.13 on Account, it was seen that the assessee under-valued the stock to the tune of Rs. 24,43,49,000/-. It was mentioned in the note that in view of the revised policy of the government relating to regulation of subsidy for production beyond hundred per cent of capacity, the company had considered the Import Parity Price (IPP) in stead of Group Concession Rate (GCR) for determination of realizable value (wherever IPP was lower) in respect of the stock of urea lying in silo after dispatches up to 100% of capacity. Consequently, the profit of the year was lower by an amount of Rs. 24,43,49,000/-. It was explained that the Ministry of Chemicals and Fertilizers, Department of Fertilizers, vide its letter dated 4.7.2003, inter-alia, issued parameters w.e.f. 1.4.2003 regarding sale of urea beyond 100% of the re-assessed capacity. These parameters stipulate that manufacturing units would be allowed to sell urea in respect of 100% of re-assessed capacity to the manufacturers of complex fertilizers,

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exports and also supply to the Government against import requirement from time to time on principle of IPP, with the approval of the Department of Fertilizer. Accordingly, the closing stock of 80,085 MT of urea (beyond 100% of plant capacity) was valued by the company at IPP, being lower than the cost of production. Due to this change in policy for valuation of stock, the impact of modification in the accounting policy was disclosed in the Notes as per the requirement of AS-1. The AO considered the explanation. It was pointed out that the assessee could value its stock at cost or market price, whichever is lower. Once a particular method of valuation is adopted, the same should be continued in the subsequent year. The method of valuation may, however, be changed when the adopted method is also a recognized method and such method is subsequently followed from year to year. However, the assessee cannot change the method of valuation suddenly to its advantage. The changes in policy by the Government did not oblige the assessee to change its accounting policy. The purpose of the policy was to regulate the sale of product produced in excess of re-assessed capacity. The change made by the assessee involves four suppositions, namely, -(i) sale of excess production of urea above 100% of re-assessed capacity while the same is still in closing stock, (ii) prior

approval of the Department of Fertilizers, (iii) IPP on the date of actual sale, which may vary from the date of closing stock valuation, and (iv) supply to the Government against its requirement of import. The assessee has not filed the approval of the Department of Fertilizers. In absence thereof, the assessee was obliged to value the stock at cost price or market price, whichever is lower. Therefore, the addition of Rs. 24,43,49,000/- was made to the stock, leading to an addition of an identical amount to the total income. The matter was agitated in appeal. The ld. CIT(A) agreed with the AO that since prior approval was not obtained from the Ministry of Chemicals and Fertilizers, the addition to the closing stock was justified.

7.1 Before us, the learned counsel for the assessee referred to page 86 of the paper book, which furnishes the details of difference in the valuation of closing stock of urea. The assessee owned three units, located at Nangal, Bhatinda and Panipat. It was pointed out that fertilizers are controlled commodities, to be sold at the price fixed by the Government. At the same time, the Government furnishes subsidy to meet the deficiency arising on account of the controlled price. The Government realized that the subsidy granted was mo[illegible] the

intended subsidy wherever the capacity utilization was more than 100%, leading to lower cost of production. Therefore, the aforesaid instruction was issued that in such situation, the subsidy will be granted on the principle of IPP, with the prior approval of the Department of Fertilizer. The sale price of urea was fixed at Rs. 4,830/- per MT, while the cost price was Rs. 11,728/-PMT in Nangal unit, Rs. 10,861/- PMT in Bhatinda and Rs. 10,582/- PMT in Panipat unit. The IPP was Rs. 8,021/- in Nangal unit, Rs. 7,967/- in Bhatinda unit and Rs.7,989/- in Panipat unit. Therefore, wherever stock consisted of the item produced in excess of 100% utilization of the capacity, the assessee valued the same at IPP. This was done because the cost price was much higher than the sale price and the IPP fell between the cost price and the sale price. If the logic of the AO and the learned CIT(A) is to be accepted, then the assessee could have valued the whole of such stock at Rs. 4,830/- PMT. However, as per revised guidelines, the assessee was entitled to receive IPP in respect of such stock also albeit with the previous approval of the Department of Fertilizer. Such approval was not received, but in view of expectation thereof, the assessee valued the stock at a higher price based upon IPP. Thus, it was agitated that no

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adjustment could have been made to the value of the stock on the basis of logic furnished by the AO or even on facts of the case.

7.2 In reply, the learned DR relied on the findings of the learned CIT(A), furnished in paragraphs 6.7, 6.8 and 6.9, which are reproduced below for the sake of ready reference:-

"6.7 The reading of the above letter in my view supports A.O's finding in the assessment order. That undervaluation has been done by the appellant on basis of contingent parameters. The applicability of import parity price for working out net gains would depend on following contingencies:

i) Sales are out of stock lying with assessee and that 100% of re-assessed capacity production has already taken place in succeeding year.

ii) That prior approval of Ministry of Chemical and Fertilizers would be there and could be available.

iii) Sales are out of stock lying with assessee and that 100% of re-assessed capacity production has already taken place in succeeding year.

iv) That prior approval of Ministry of Chemical and Fertilizers would be there and could be available.

v) That approval will be at import parity price prevailing on day of stock valuation.

vi) That import parity price will be same on the date of sale because Import Parity Price changes periodically and the price itself is contingent.

vii) That there will be requirement from the agreement against import requirement.

6.8 The appellant had not produced any such prior approval from Ministry of Chemical and Fertilizers as on date of valuation of stock to have been capable of reasonable certainty in respect of any of above contingencies. Therefore, AO is correct in stating that undervaluation in fact is based on contingencies and represents providing of continent liability by the appellant in favour of lower valuation.

6.9 Under the mercantile system of accounting unascertained and contingent liabilities are not an allowable deduction. Therefore, appellant is not correct in reducing the valuation of present day stock on basis of anticipation of an event or applicability of price which itself is dependent on several uncertainties. The undervaluation of stock to extent of Rs. 24,43,49,000/- therefore, represents claim of contingent liability and the AO had rightly disallowed the same. A.O.'s action is, therefore, upheld."

7.3 We have considered the facts of the case and rival submissions. It is the agreed position of the rival parties that the assessee is entitled to the valuation of stock on market price or cost price, whichever is lower. From the data available on page 86 of the paper book, summarized above, it is seen that the average cost price of production was more than Rs. 10,000/- PMT, while the sale price was Rs. 4,830/- PMT. The assessee valued the stock, as described above, in Nangal unit at Rs.

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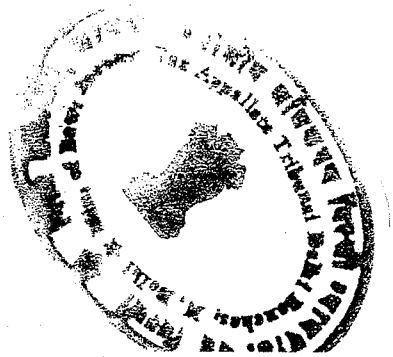
8,021/- PMT; in Bhatinda unit at Rs. 7,967/- PMT and in Panipat unit at Rs. 7,989/- PMT. Obviously, this was done in expectation of the subsidy to be received from the Government. This could be done only with the approval of the Department of Fertilizers. However, in line with the policy guidelines, the assessee took into account the IPP in such cases and the assessee could not have realized higher price in terms of sale price per metric ton and the subsidy per metric tone available in respect of such stock. Therefore, we do not find any infirmity in the method used by the assessee even in absence of any approval from the Department of Fertilizers. In view thereof, we are of the view that the learned CIT(Appeals) erred in upholding the order of the AO. Accordingly, ground no. 3 is allowed.

8. Ground no. 4 is against the finding of the learned CIT(A), in which the disallowance of Rs. 40,43,000/-, made by the AO on account of writing off the loose tools, was upheld. In this connection, it is mentioned in the assessment order that as per Note No.10 on account, the assessee changed its accounting policy in respect of writing off of the loose tools from a period of three years to one year. In view thereof, the opening inventory of Rs. 32,12,000/- was charged to

revenue account in this year. Further, loose tools of the value of Rs. 21,52,000/-, issued during this year, were also charged to the revenue account. It was explained that the change was made in accordance with the Accounting Standards issued by Institute of Chartered Accountants of India. The AO considered the explanation. It was pointed out by him that loose tools were part of the machinery u/s 32 and, therefore, should have been written off @ 25% on WDV method. In view thereof, the depreciation was recomputed, leading to an addition of Rs. 40,43,000/-. The matter was agitated in appeal. It was pointed out that the method of valuation in this behalf was changed, in view of AS-2, effective from 1.4.1999, which was mandatory in so far as auditors were concerned. Since the change was on account of Accounting Standard, the addition made by the AO was unjustified. The learned CIT(A) considered the facts of the case. It was pointed out by him that AS-2 deals with inventories held for the purpose of re-sale. Therefore, this Accounting Standard is not applicable to loose tools. AS-10 deals with fixed assets, which provides that the spares etc. should be written off over a period of time representing the useful life thereof. Thus, it was held that the assessee was not right in writing



off the whole of the inventory of loose tools in one year and the addition made by the AO was confirmed.

8.1 The case of the learned counsel was that the accounts had been audited by a chartered accountant and in view thereof, the loose tools were written off in the year in which the same were purchased and issued. He referred to the argument of the learned CIT(A) that AS-10 and not AS-2 was applicable. However, his case was that there was no mala-fide involved in changing the method of writing off of the loose tools.

8.2 In reply, the learned DR relied on paragraphs 7.2, 7.3 and 7.4 of the order of the learned CIT(A), which read as under:-

> *"7.2 I have considered appellant's reply. It is clear that till the current previous year appellant was treating loose tools as having useful life of 3 years and each year 1/3rd of its value was being charged off to P & L account. However, in current year, appellant on basis of AS-2 standards charged full value of tools to P & L account at time of issue and while doing so also changed to P & L account as consumed the opening stock of loose tools.*
>
> *The AO had held the change to be not bona fide and further held that in any case such tools are part of fixed assets*

and, therefore, entitled to depreciation, he accordingly capitalized both expenses and allowed depreciation.

The appellant's claim to have followed AS-2 in changing method of accounting. Accepting for argument sake, the appellant argument there also the A.O's action in treating the loose tools as part of the fixed assets cannot be faulted. The copy of the AS-2 enclosed by appellant reveals following:-

> *"4. Inventories encompass goods purchased and held for re-sale, for example, merchandise purchased by a retailer and held for resale, computer software held for resale, or land and other property held for resale. Inventories also encompass finished goods produced, or work in progress being produced, by the enterprise and include materials, maintenance supplies, consumables and loose tools awaiting use in the production process. Inventories do not include machinery spares which can be used only in connection with an item of fixed asset and whose use is expected to be irregular, such machinery spares are accounted for in accordance with Accounting Standard (AS) 10, Accounting for fixed assets."*

7.3 The appellant's reply in appellate proceeding reproduced earlier leaves no doubt that these loose tools are not items going directly in production process. Rather as stated by appellant, these loose tools are used for repairs of all kinds of plant and machinery, electrical installation and other infrastructure in factory premises, i.e., are used only in connection with an item of fixed assets. Therefore, following above Accounting Standard they cannot be treated as part of inventory and changed off as done by the appellant.

7.4 They are to be treated as per AS-10 accounting Standard for fixed assets. Therefore, change done by appellant as per AS-2 is not proper. The revised AS-10

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standards in fact mandates that major spare parts expected to be used during more then one period and spare parts used only in connection with a tangible fixed assets, are accounted as tangible fixed assets. Servicing and stand by equipment are also accounted for as tangible fixed assets."

8.3 We have considered the facts of the case and rival submissions. The issue before us is not only whether the change in method of accounting was bona fide or mala fide for the reason that the basic argument of the learned counsel is that the change is made in accordance with the Accounting Standard prescribed by the ICAI. However, the learned CIT(A) clearly pointed out that AS-2 deals only with such spares which are used in repairs of machinery, while AS-10 deals with such spares and machinery, which is the operating asset of the assessee, used in the process of manufacture. Under AS-10, the asset has to be written off over its useful life. The assessee carlier considered the useful life of tools to be three years. Nothing is shown to us to reach to a conclusion as to how this life has now become one year. In absence thereof, it is held that the learned CIT(A) was right in upholding the order of the AO. Thus, this ground is dismissed.

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9. Ground nos. 1 and 5 are general and residuary in nature, which were not argued by the learned counsel for the assessee. In view thereof, they are dismissed.

10. In the result, the appeal is partly allowed.

The order was pronounced in the open court on 11 July, 2008.

Sd/
(George Mathan)
Judicial Member

Sd/
(K.G.Bansal)
Accountant Member

Date of Order: 11th July, 2008.
SP Satia

Copy of the order forwarded to:-

By Hand 1. National Fertilizers Ltd., New Delhi.
2. Dy. CIT, Circle 13(1), New Delhi.
3. CIT(A)-,
4. CIT,
5. The DR, ITAT, New Delhi.

Assistant Registrar.

सहायक पंजीकार
Assistant Registrar
आयकर अपीलीय अधिकरण
Income Tax Appallate Tribunal
दिल्ली पीठ, नई दिल्ली
Delhi Benches, New Delhi