IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "E", MUMBAI

BEFORE SHRI P.M. JAGTAP, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER

ITA No.5340/Mum/11
Assessment Year:1997-98 (wrongly mentioned as 2007-08 by the appellant)

ITO-19(2)(1), Room No.312, 3rd Floor, Piramal Chambers, Lalbaug, Parel, Mumbai- 400 012	Vs.	M/s. Delta International (Wrongly mentioned as Delta Corporation by the appellant) 159, CST Road, Kalina, Santacruz (E), Mumbai -400098 **PAN: AAAFD2233J**
(Appellant)		(Respondent)

ITA No.5337/Mum/11
Assessment Year:1997-98 (wrongly mentioned as 2007-08 by the appellant)

ITO-19(2)(1), Room No.312, 3rd Floor, Piramal Chambers, Lalbaug, Parel, Mumbai- 400 012	Vs.	M/s. East West Corporation 159, CST Road, Kalina, Santacruz (E), Mumbai -400098 **PAN: AAAFE1150F**
(Appellant)		(Respondent)

ITA No.5339/Mum/11
Assessment Year:1997-98 (wrongly mentioned as 2007-08 by the appellant)

ITO-19(2)(1), Room No.312, 3rd Floor, Piramal Chambers, Lalbaug, Parel, Mumbai- 400 012	Vs.	M/s. Delta International (Wrongly mentioned as Delta Corporation by the appellant) 159, CST Road, Kalina, Santacruz (E), Mumbai -400098 **PAN: AAAFD2233J**
(Appellant)		(Respondent)

ITA No.5338/Mum/11
Assessment Year:1997-98 (wrongly mentioned as 2007-08 by the appellant)

ITO-19(2)(1), Room No.312, 3rd Floor, Piramal Chambers, Lalbaug, Parel, Mumbai- 400 012	Vs.	M/s. East West Corporation 159, CST Road, Kalina, Santacruz (E), Mumbai -400098 **PAN: AAAFE1150F**
(Appellant)		(Respondent)

Assessee by	: Ms. Vasanti Patel, A.R.
Revenue by	: Shri Javed Akhtar, D.R.
Date of Hearing	: 08.08.13
Date of Pronouncement	: 25.09.13

O R D E R

Per Sanjay Garg, Judicial Member:

These four appeals preferred by Revenue relate to different but connected assessees with regard to assessment year 1997-1998. Since common issues are raised in these appeals, so these are taken together for disposal with a consolidated order. The facts for the sake of convenience are taken from the case of M/s. Delta International in ITA No.5340/M/2011.

ITA No.5340/M/2011.

2. This appeal has been directed against the order of the CIT(A) dated 25.4.2011.

Ground Nos.1 to 3:

Ground Nos. 1 to 3 relate to disallowance of discounting charges/ interest of Rs.46,32,752. Briefly stated the facts of the case are that the original assessment in this case was completed, making addition, inter-alia, of Rs.46,32,752/- on account of discounting charges/interest. When the matter finally came up before the Tribunal, the Tribunal vide order dated 28.11.2006 passed in ITA No.639/M/2004 restored the issue to the file of A.O. with a direction to examine as to whether such discount/interest was incurred by the assessee in carrying on of its business. This order was passed by the Tribunal by following another order by the Tribunal in the case of another group concern of the assessee i.e. “Fellowship Corporation” v. JCIT [ITA No.4352/Mum/2001]. Pursuant to the direction given by the Tribunal, the

Assessing Officer repeated the addition towards finance charges in the present case. The learned CIT(A), however deleted the said addition. The Revenue has come up in appeal against such deletion.

3. The ld. AR has brought to our notice that the issue under consideration is squarely covered with the findings of the co-ordinate bench of the tribunal given in the own case of the assessee for A.Y.1996-97 passed in ITA No.5028/Mum/2009 vide order dt.24.07.2013. The operating part of the order, for the sake of convenience is reproduced as under:

> "*4. From the body of the assessment order it can be seen that the Assessing Officer simply repeated the assessment and first appellate authority's order without discussing anything new about the matter on which the Tribunal gave direction. He simply noticed that the assessee did not produce any additional evidence to co-relate the financing charges with the business expenditure. As against that, the learned AR invited our attention towards various details furnished before the Assessing Officer during the course of such fresh proceedings. First letter of the assessee in the fresh proceedings is dated 05.09.2006 by which it furnished Fund flow statement, Balance sheet and profit and loss account for the year in question and for the earlier year, details of discount charges paid, statement of account, parties in support of receipt / payment of discounting charges, copies of account of parties tracing the original funds, user of funds and repayment of charges with discounting charges etc. Another letter was filed before the Assessing Officer on 24.11.2006 producing complete books of account, details of finance charges paid with bifurcation of parties and rate of interest and a copy of assessment order passed by the A.O. for the preceding year in which similar deduction was allowed. The present assessment order was passed by the A.O. on 18.12.2006 after filing of the above referred documents by the assessee. It is surprising that the Assessing Officer did not make a whisper in the assessment order of such details having been filed by the assessee. What to talk of adversely commenting, the A.O. even did not bother to incorporate or discuss such facts in the assessment order. This fact has been elaborately considered by the learned CIT(A), the discussion on which has been made in paras 1.10 to 1.14 of the impugned order. On the appreciation of the entire material / evidence placed by the assessee before the A.O. in the fresh round of proceedings, the learned CIT(A) has recorded a categorical finding that these expenses were incurred during the course of business. Apart from relying on the assessment order, the learned Departmental Representative could not controvert the findings given by the learned CIT(A) in support of the grant of deduction. We, therefore, uphold the impugned order in deleting the said addition."*

4. Ld. D.R. has not brought before us any distinguishable fact which may

justify departure from the findings of the co-ordinate bench of the tribunal given for the preceding year based on similar facts and circumstances. So respectfully following the findings of the co ordinate bench of the tribunal for the earlier year, the issue is decided against the Revenue and the order of the ld. CIT(A) deleting the disallowance relating to the issue is upheld.

Ground no.4

Ground no. 4 of the appeal relates to the disallowance of Rs.13,30,886/- on account of interest on call money. This issue was also restored by the ITAT to the AO for fresh examination.

5. In the restored proceedings, assessee submitted requisite details and demonstrated that the interest was paid in the course of business. The interest on call money was paid in respect of shares held as stock-in-trade and, therefore, allowable as business expenditure. However, AO did not appreciate the submissions of the assessee and repeated the addition originally made in the assessment. Aggrieved with the above, assessee filed an appeal before the first appellate authority.

6. During the proceedings before the ld. CIT (A) in the second round, assessee submitted that the impugned interest expenditure was paid on unpaid call money, which is incidental to the business activity of the assessee. Therefore, the claim is allowable u/s 37(1) read with 36(1)(iii) of the Act. These expenses are incidental to the shares, which were undisputedly held by the assessee as stock- in-trade. He also submitted that interest payments on unpaid call money is allowable in view of the judgment of the Hon'ble jurisdictional High Court in the case of "Smt. Nirmala M. Doshi" vs. CIT (82 ITR 648) (Bom) ,the relevant portions are extracted by the ld. CIT (A) in para 5 of the impugned order. On considering the above submissions as well as the

legal propositions, the ld. CIT (A) came to the conclusion that the AO did not apply his mind to the documents /evidences furnished by the assessee and mechanically repeated the addition. The ld. CIT(A) thus deleted the same considering the facts and evidences and also the legal proposition set in the cited decision of the Hon'ble jurisdictional High Court in the case of "Smt. Nirmala M. Doshi" vs. CIT (supra).

7. Aggrieved with the above decision of the ld. CIT (A), Revenue is in appeal now before us.

8. The ld. AR has brought to our notice that the issue under consideration is squarely covered with the findings of the co-ordinate bench of the tribunal given in the case of group concern of the assessee namely "M/s Alpha Corporation" for A.Y.1997-98 passed in ITA No.5948/Mum/2011 vide order dt.15.5.2013. The operating part of the said order, for the sake of convenience is reproduced as under:

> *"7.1. The perusal of the cited decision of Hon'ble jurisdictional High Court in the case of Smt. Nirmala M. Doshi vs. CIT (supra) revealed that the claim of assessee is certainly allowable in favour of the assessee. The said judgment is relevant for the proposition that the payment of interest on the amounts of the call money stands in the same footing as payment of like interest in the same amount, therefore, such interest constitutes revenue expenditure. Considering the above, we are of the opinion that the order of the CIT (A) is reasonable and it does not call for any interference. Accordingly, grounds raised by the Revenue are dismissed."*

9. Ld. DR has not brought before us any distinguishable fact which may justify departure from the findings of the co-ordinate bench of the tribunal given on similar facts and circumstances in the case of group concern of the assessee. So respectfully following the findings of the co ordinate bench of the Tribunal the issue is decided against the Revenue and the order of the ld. CIT(A) deleting the disallowance relating to this issue is also upheld.

ITA No.5337/M/2011:

Both the sides are in agreement that the facts and circumstances of this appeal are mutatis mutandis similar to those of Delta International, discussed above. Following the view taken here in above, we uphold the impugned order and confirm the deletion of additions in the above case in both the issues.

I.T.A. No.5339/M/2011 & 5338/M/2011 for (AY: 1997-1998) relating to Penalty u/s 271(1)(c) of the Act :

10. These appeals filed by the Revenue are against two different orders of CIT (A) for the A.Y. 1997-98 dated 25.4.2011 deleting the penalty of Rs.47,70,894/- and Rs.69,30,842/- respectively in the above noted appeals, levied u/s 271(1)(c) of the Act, because of deletion of the quantum additions.

11. It is evident that the impugned penalty is directly incidental to the addition on account of disallowances as discussed and adjudicated above in ITA No.5340/M/2011 & ITA No.5337/M/2011. As mentioned above, we have confirmed the order the ld. CIT(A) deleting the disallowances which were the very basis for the levy of penalty in these cases. It is a trite law that when the quantum of additions made by the AO are deleted, the related penalty levied u/s 271(1)(c) of the Act does not survive. Accordingly, these two appeals of the Revenue are also hereby dismissed.

12. In the result, all the above titled four appeals of the Revenue are dismissed.

Order pronounced in the open court on 25.09.2013.

Sd/-	**Sd/-**
(P.M. Jagtap)	**(Sanjay Garg)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated: 25.09.2013.

* Kishore

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR “C” Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.