

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF OCTOBER, 2021

PRESENT

THE HON'BLE MRS.JUSTICE S.SUJATHA

AND

THE HON'BLE MR. JUSTICE E.S.INDIRESH

I.T.A.No.137/2021

BETWEEN :

COFFEE DAY GLOBAL LIMITED
(FORMERLY KNOWN AS
AMALGAMATED BEAN COFFEE
TRADING COMPANY LTD.)
NO.23/2, COFFEE DAY SQUARE,
VITTAL MALLYA ROAD,
BENGALURU-560001
REP BY ITS DIRECTOR
Mr. JAYARAJ C. HUBLI

...APPELLANT

(BY SMT.MANASA ANANTHAN, ADV. A/W
SRI SURYANARAYANA T., ADV.)

AND :

- 1 . DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE 2(1)(1), BMTc BUILDING,
KORAMANGALA 6TH BLOCK,
BENGALURU-560085.
- 2 . DEPUTY COMMISSIONER OF INCOME-TAX
CIRCLE-1(1)(1), BMTc BUILDING,
KORAMANGALA 6TH BLOCK,
BENGALURU-560085.
- 3 . ADDITIONAL COMMISSIONER OF INCOME-TAX
RANGE 1(1), BMTc BUILDING,

KORAMANGALA 6TH BLOCK,
BENGALURU-560085.

...RESPONDENTS

(BY SRI E.I.SANMATHI, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 30.09.2020 PASSED IN IT(TP)A.NOS.815 AND 816/BANG/2017, FOR THE ASSESSMENT YEAR 2011-2012 AND 2012-2013. PRAYING TO 1. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE. 2. ALLOW THE APPEAL AND SET ASIDE THE IMPUGNED COMMON ORDER PRONOUNCED ON 30.09.2020 BY THE TRIBUNAL IN IT(TP)A.NOS. 815 AND 816/BANG/2017 (ANNEXURE-C) FOR THE ASSESSMENT YEAR 2011-2012 AND 2012-2013 TO THE EXTENT QUESTIONED HEREIN.

THIS APPEAL COMING ON FOR ORDERS, THIS DAY, **S. SUJATHA, J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

This appeal is filed by the assessee under Section 260A of the Income Tax Act, 1961 assailing the order dated 30.09.2020 passed in IT(TP)A Nos.815 & 816/Bang/2017 by the Income Tax Appellate Tribunal, "A" Bench, Bangalore ('Tribunal' for short) relating to the assessment years 2011-12 and 2012-13 raising following substantial question of law:-

"Whether on the facts, in the circumstances and on the grounds and contentions urged, the Tribunal was correct in

upholding the disallowance of interest on capital as attributable to capital work-in-progress relying on the proviso to Section 36(1)(iii) when the said proviso was inapplicable to the case of the Appellant and no part of the borrowed capital was utilized for investment in work-in-progress in any event?”

2. The appellant -- assessee is engaged in the business of selling coffee to domestic and overseas customers and also engaged in the retailing of coffee and other related products through its chain of outlets under café and express kiosks formats, under the brand name “Coffee Day”. The returns of income filed for the assessment years 2011-12 and 2012-13 were taken up for scrutiny and the Assessing Officer passed assessment orders *inter alia* making disallowance of interest on borrowed capital as having utilized towards capital work-in-progress and as such warranting capitalization. Being aggrieved, the appellant preferred

appeals before the CIT(A), who passed the orders holding that interest attributable to capital work-in-progress would have to be allowed as it was an expansion of the business. On the appeals preferred by the Revenue before the Tribunal to the extent aggrieved by the order of the CIT(A) as aforesaid, the Tribunal reversed the order of the CIT(A). Hence, this appeal is preferred by the assessee.

3. Learned counsel for the appellant – assessee placing reliance on the judgment of this Court in ITA No.219/2020 (D.D. 28.05.2021) and ITA No.315/2018 and connected matters (D.D. 12.03.2021) would contend that the issue involved herein is no more *res integra* and the substantial question of law raised herein is answered by this Court in favour of the assessee and as such the same is squarely applicable to the facts of the present case. It is also pointed out that the Tribunal has placed reliance on the orders passed by the

Tribunal in the assessee's own case relating to the assessment years 2010-11, 2013-14 and 2014-15 in dismissing the appeals filed by the assessee inasmuch as this aspect is concerned. The appeals filed by the Revenue and assessee relating to the aforesaid assessment years referred to by the Tribunal, in ITA No.219/2020, ITA No.315/2018 and connected matters, supra, having been disposed of in favour of the assessee, the substantial question of law deserves to be answered in favour of the assessee.

4. Learned counsel for the Revenue could not dispute this aspect of the matter inasmuch as the disposal of the appeals filed by the very same assessee in ITA No.219/2020, ITA No.315/2018 and connected matters, supra.

5. In view of the aforesaid, we have no reasons to differ from the decision of the Co-ordinate Bench of this Court. Hence, we answer the substantial question

of law in favour of the assessee and against the Revenue.

The appeal stands allowed accordingly.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

PMR