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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 539/2026

+ ITA 540/2026

THE PR. COMMISSIONER OF INCOME TAX -CENTRAL -1

.....Appellant

Through: Mr. Ruchir Bhatia, SSC with Mr.
Anant Maan & Mr. Pratyaksh Gupta,
JSCs.

versus

SPICEJET LIMITED

.....Respondent

Through: Mr. Mayank nagi & Ms. Husnal Syali
Nagi, Advs.

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

ORDER

% **23.07.2026**

CM APPL. 44221/2026 in ITA 539/2026

CM APPL. 44222/2026 in ITA 540/2026

1. For the reasons stated in the applications, the delay of 1080 days (ITA 539/2026) and 1080 days (ITA 540/2026) in re-filing the appeals is condoned.

2. Applications are disposed of.

ITA 539/2026

ITA 540/2026

3. These appeals arise out of the order dated 28th December, 2022 passed by the Income Tax Appellate Tribunal (hereinafter, 'ITAT') in **ITA No.5657/DEL/2011**.

4. *Vide* the said appeal, the order dated 23.08.2013 (in ITA 539/2026) and order dated 20.12.2012 (in ITA 540/2026) passed by Commissioner of



Income Tax (Appeals) for the Assessment Years 2006-07, 2007-08, 2008-09, 2009-10 & 2010-2011 was challenged.

5. The short question that arises in these appeals is whether redemption of Foreign Currency Convertible Bonds (hereinafter, 'FCCBs') ought to be considered as capital expenditure or as revenue expenditure.

6. A perusal of the ITAT's order dated 28th December, 2022 would show that as per ITAT, the said question has been decided in several decisions of this Court and the ITAT has, in fact, followed the said decisions including **CIT v. Jagatjit Industries, (2006) 287 ITR 46**. The findings of the ITAT are as under:

“48. Briefly the facts are, in course of assessment proceeding, the Ministry Assessing Officer noticed that on the FCCBs issued in financial year 2005-06 for a period of 5 years which were subsequently convertible to equity shares, the assessee, in the computation of income has claimed deduction of Rs.28,59,78,667/- as premium payable on redemption of FCCBs. After calling for necessary details and examining them the Assessing Officer noticed that the assessee had set off the premium payable on redemption of FCCBs. Being of the view that the premium payable on the FCCBs is a capital expenditure, the Assessing Officer disallowed the claim and added back to the income of the assessee. While deciding the issue in appeal, learned Commissioner (Appeals), allowed assessee's claim after taking note of the fact that the expenses on issue of FCCB bonds were allowed by his predecessors. Further, he observed that whether the bonds issued were convertible or not, is not a relevant criteria to be considered in order to adjudicate whether the expense is capital or revenue. Thereafter, following the decision of the Hon'ble Jurisdictional High Court in case of CIT Vs. Jagatjit Industries Ltd. [2006] 287 ITR 46, learned Commissioner (Appeals) deleted the disallowance.



49. We have considered rival submissions and perused the materials on record. While deciding Revenue's appeal for assessment years 2006-07, being ITA No.3264/Del/2011, we have upheld the decision of learned Commissioner (Appeals) in allowing assessee's claim of revenue expenditure in respect of expenditure incurred on issue of FCCBs. It is further observed, in assessment years 2006-07, the Assessing Officer himself has allowed the premium payable on redemption of FCCBs as revenue expenditure. Therefore, we do not find any infirmity in the decision of learned Commissioner (Appeals) on the issue. Ground raised is dismissed."

7. Mr. Bhatia, Id. Sr. Standing Counsel appearing for the Appellants submits that though the issue that FCCBs would be treated as revenue expenditure is settled, the question of law that still arises is that the expenditure ought to be spread across the life of the FCCBs i.e. 5 years and could not have been claimed in the very first year itself.

8. Mr. Mayank Nagi, Id. Counsel appearing for the Respondent relies upon another decision in ***CIT v. Havells India Ltd.,(2013) 352 ITR 376*** wherein a similar issue has been considered by the Coordinate Bench of this Court. Relevant paragraphs in the said judgment are as under:

"22. We may now turn to the third question. The brief facts in this connection are as follows. During the relevant previous year, the assessee issued 4 per cent. fully convertible debentures amounting to Rs. 2,350 lakhs comprising of 235 debentures of the face value of Rs. 10 lakhs each to another company by name M/s. Shine Ltd. which was incorporated under the laws of Mauritius. The issue of debentures was to give effect to the investor agreement entered into with the Mauritius company. Necessary amendments were made to the articles of association of the assessee-company. In connection with the



debentures issued the assessee had incurred the following expenditure:

	Rs.
<i>(i) Paid to M/s. Price Water House Coopers (P.) Ltd.</i>	53,32,500
<i>(ii) Paid to M/s. Wadia Chandy and Co.</i>	6,39,450
<i>(iii) Payment M/s. KPMG India Pvt. Ltd.</i>	4,88,768
Total	64,60,718

23. In addition to the aforesaid expenditure, the assessee also paid interest of Rs. 28,07,123 on the debentures in the relevant previous years. The aggregate of all the four items of expenditure came to Rs. 92,67,841.

*24. The above expenditure was claimed as revenue expenditure in the return of income. The Assessing Officer was of the view that the debenture issue was in fact an issue of equity share capital to the Mauritius company and accordingly the entire expenditure should be disallowed as capital expenditure. In support of this conclusion he referred to the board resolution in which it was stated that the FCDs would be converted into equity shares on or before June 12, 2006, and these shares would be issued to the Mauritius company. It was also mentioned in the resolution that the Mauritius company would be entitled to bonus shares in the ratio of 1: 1 and they will be allotted at the time of conversion of the debentures. According to the Assessing Officer, this actually meant that the assessee was in fact making an issue of share capital and according to the judgments of the Supreme Court in *Brooke Bond India Ltd. v. CIT* (1997) 225 ITR 798 (SC) and *Punjab State Industrial Development Corporation Ltd. v. CIT* (1997) 225 ITR 792 (SC), any expenditure incurred in relation to the*



expansion of the capital base of a company should be treated as capital expenditure. He accordingly disallowed the expenditure of Rs. 92,67,841.

25. On appeal the Commissioner of Income-tax (Appeals) referred to the judgment of the Rajasthan High Court in CIT v. Secure Meters Ltd. (2010) 321 ITR 611 (Raj) in which it was held that the position has to be examined only with reference to the time when the debentures were issued and that the fact that at a future point of time they were to be converted into shares was irrelevant in order to decide the allowability of the expenditure incurred in connection with the debenture issue, and allowed the expenditure as revenue expenditure. He also noted that the special leave petition filed by the Revenue against the judgment of the Rajasthan High Court (supra), was dismissed on August 11, 2009. He accordingly directed the Assessing Officer to allow the expenditure as revenue expenditure. His decision was affirmed by the Tribunal in the appeal by the revenue in I. T. A. No. 2093/Del/2010.

26. The Revenue is in appeal. The main contention on its behalf is that the position should be seen not only with reference to time at which the debentures are issued but the fact that at a future point of time they were to be converted in shares should also be taken note of in order to judge the allowability of the expenditure incurred in connection with the debenture issue. It was submitted that on the facts of the present case, the debentures were to be converted within a period of 15 months, that is, on or before June 12, 2006, and that the assessee-company had even fixed the price at which the shares would be issued upon conversion of the debentures, and that even the issue of bonus shares had been finalised at the time of the debenture issue and all these facts clearly showed that the issue was in truth and effect only an issue of share capital. It was accordingly contended that the judgments of the Supreme Court cited supra were squarely applicable.



27. It is well settled that expenditure incurred in connection with the issue of debentures or obtaining loan is revenue expenditure. Reference in this connection may be made to the leading judgment of the Supreme Court in *India Cements Ltd. v. CIT* (1966) 60 ITR 52 (SC). The question before us, however, is whether it is a debenture issue or an issue of share capital involving the strengthening of the capital base of the company. Though it prima facie appears that there are sufficient facts to indicate that what was contemplated was an issue of shares to the Mauritius company under the investor agreement which would result in strengthening of the assessee's capital base, having regard to the judgments cited on behalf of the assessee, in which it has been held that despite indications to the effect that the debentures are to be converted in the near future into equity shares, the expenditure incurred should be allowed as revenue expenditure on the basis of the factual position obtaining at the time of the debenture issue, we are not inclined to take a different view. The following cases have been cited on behalf of the assessee in support of the view that even in such a situation the expenditure is allowable as revenue expenditure:

- (i) *CIT v. East India Hotels Ltd.* (2001) 252 ITR 860 (Cal)
- (ii) *CIT v. ITC Hotels Ltd.* (2011) 334 ITR 109 (Karn);
- (iii) *CIT v. South India Corporation (Agencies) Ltd.* [2007] 290 ITR 217 (Mad) ; and
- (iv) *CIT v. First Leasing Co. of India Ltd.* (2008) 304 ITR 67(Mad).

28. In addition to the above judgments, we also have the judgment of the Rajasthan High Court *CIT v. Secure Meters Ltd.* (2010) 321 ITR 611 (Raj) against which the special leave petition filed by the Revenue was dismissed. Having regard to the predominant view taken in the above judgments, in which the judgment of the Supreme Court in *India Cements Ltd.* (1966) 60 ITR 52 (SC) has been noticed, we are inclined to uphold the view taken by the Tribunal



that the expenditure is revenue in nature. Accordingly, we answer the substantial question of law in favour of the assessee and against the Revenue.”

9. Heard. It is a settled position in law that expenditure incurred in connection with the issue of debentures or for obtaining a loan constitutes revenue expenditure. The moment the FCCBs or debentures are issued, the liability is incurred by the assessee, which qualifies as an expenditure within the meaning of Section 37 of the Income Tax Act, 1961. As held by the Supreme Court in ***Madras Industrial Investment Corporation Ltd. v. CIT, [1997] 225 ITR 802***, the moment the debentures are issued, and the funds raised therefrom are utilised by the assessee for the purposes of its business, the said expenditure is to be regarded as revenue expenditure. The relevant portion of the said decision reads as under:

*“12. Therefore, when a company issues debentures at a discount, it incurs a liability to pay a larger amount than what it has borrowed, at a future date. We need not go into the question whether this additional liability equivalent to the discount, which is incurred in praesenti but is payable in future, represents deferred interest or not. That may depend upon the totality of circumstances relating to the issue of debentures, including its terms. The liability, however, to pay the discounted amount over and above the amount received for the debentures, is a liability which has been incurred by the company for the purpose of its business in order to generate funds for its business activities. **The amounts so obtained by issue of debentures are used by the company for the purposes of its business. This would, therefore, be expenditure.***

*13. Section 37(1) further requires that the expenditure should not be of a capital nature. In the case of *India Cements Ltd. v. CIT [(1966) 60 ITR 52 : AIR 1966 SC 1053]* the appellant Company had obtained a loan of Rs 40 lakhs from the Industrial Finance Corporation secured by a*



charge on its fixed assets. In connection with this loan it spent a sum of Rs 84,633 towards stamp duty, registration fees, lawyer's fees, etc., and claimed this amount as business expenditure. This Court considered whether the expenditure so incurred was business expenditure or whether it was capital expenditure. This Court quoted with approval the observations of Shah, J. in *Bombay Steam Navigation Co. (1953) (P) Ltd. v. CIT* [(1965) 56 ITR 52 : AIR 1965 SC 1201] (ITR at p. 59) that whether a particular expenditure is revenue expenditure incurred for the purpose of business must be determined on a consideration of all the facts and circumstances, and by the application of principles of commercial trading. The question must be viewed in the larger context of business necessity or expediency. **If the outgoing or expenditure is so related to the carrying on or conduct of the business, that it may be regarded as an integral part of the profit-making process and not for acquisition of an asset or a right of a permanent character, the possession of which is a condition of the carrying on of the business, the expenditure may be regarded as revenue expenditure.** This Court went on to observe that the provisions of the English Income Tax Act in this regard are somewhat different from those of the Indian Income Tax Act. It referred to the English case of *Texas Land and Mortgage Co. v. William Holtham* [(1894) 3 Tax Cas 255 : 63 LJQB 496] (Tax cases at p. 260) where a mortgage company had raised money by the issue of debentures and debentures stock and incurred expenses in this connection. The English High Court said that the expenses could not be deducted as trading expenses because the amount paid was for raising capital. **Differing from the observations made therein, this Court observed that a loan is a liability and has to be repaid and in its opinion it is erroneous to consider a liability as an asset or an advantage.** This Court disagreed with the English view that borrowing money by the issue of debentures was an acquisition of capital asset and that any commission or expenditure incurred in respect thereof was of a capital



nature. It said:

“We are of the opinion that (a) the loan obtained is not an asset or advantage of an enduring nature; (b) that the expenditure was made for securing the use of money for a certain period; and (c) that it is irrelevant to consider the object with which the loan was obtained. Consequently, in the circumstances of the case, the expenditure was revenue expenditure within Section 10(2)(xv).”

The same ratio would apply here also

14. *Our attention was drawn to the case of Lomax (Inspector of Taxes) v. Peter Dixon and Son Ltd. [12 Supp ITR 513 : (1943) 2 All ER 255, CA] , a decision of the English Court of Appeal where the English Court had treated discount or premium in the hands of the recipient as a receipt of a capital nature. But the character of payment in relation to the payer can be different from the character of that payment in the hands of the recipient. In the light of the ratio laid down by this Court in the case of India Cements Ltd. [(1966) 60 ITR 52 : AIR 1966 SC 1053] any liability incurred for the purpose of obtaining the loan would be revenue expenditure.”*

9. Moreover, the question raised by the Appellant in the present appeal that the expenditure ought to be spread across the life of the FCCBs *i.e.* 5 years and could not have been claimed in the very first year itself is also settled. In the decision of **Jagatjit Industries (Supra)**, a Coordinate Bench of this Court, while placing reliance on the decisions in **Madras Industrial Investment Corporation Ltd. (Supra)** and **Hindustan Aluminium Corporation Ltd. v. CIT, [1983] 144 ITR 474**, held that the liability to pay premium arises in the year in which the debentures were issued. The Court further clarified that the same could be proportionately spread over the period prescribed for the maturity of such debentures. It was further held by the Coordinate Bench of this Court that it is immaterial whether the debentures



were redeemable at will or only upon maturity. The Bench further observed that the fact that the debentures could not have been redeemed on or before the date of their maturity does not make any material difference. The relevant portion of the decision in ***Jagatjit Industries (Supra)*** reads as under:

“6. There is, in the light of the above authoritative pronouncement, no room for any contrary view. The fact that the debentures could not have been redeemed on or before the date of their maturity does not, in our opinion, make any material difference in so far as the application of the principle stated by the Supreme Court to the facts of the present case is concerned. What is important is that the liability to pay premium arises in the year in which the debentures were issued and could be proportionately spread over the period prescribed for the maturity of such debentures. It matters little whether the debentures were redeemable at will or only upon maturity.”

10. However, in the present case, this issue has not been raised throughout the assessment proceedings either before the Commissioner of Income Tax (Appeals) or the ITAT.

11. Therefore, the legal issue raised, in the opinion of this Court is already settled. No fresh adjudication of the said question of law is needed. Therefore, that no substantial question of law arises in the present appeal.

12. The appeals are, accordingly, dismissed. Pending applications, if any, are also disposed of.

DINESH MEHTA, J.

RAJNEESH KUMAR GUPTA, J.

JULY 23, 2026/sid