IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.302 of 2009

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Assistant Commissioner of Income Tax, Circle-2, Patna

.... Appellant/Appellant

Versus

M/S Bihar State Electronics Development Corporation Ltd., Beltron Bhawan, Shastri Nagar, Patna-23

.... Respondent/Respondent

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Appearance :

For the Appellant : Mrs. Archana Sinha, Sr. S.C.
Mr. Suman Kr. Mishra, Jr. S.C.

For the Respondent : None

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
And
HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 30-01-2015

Heard learned counsel for the appellant.

2. The appeal has been filed by the Income Tax Department against the order dated 06.02.2009 passed by the Income Tax Appellate Tribunal, Patna Bench, Patna dismissing the appeal of the Department.

3. The appeal was filed before the Tribunal on the following ground:

> "Whether on the facts and in the circumstances of the case the learned CIT (A) was warranted in ignoring the provisions of Section 43B and granting relief of Rs.91,97,390/- which was not actually paid by the assessee to the government/financial institution/bank."

4. The Tribunal noted the fact that the assessee is an

Undertaking 100% owned by the Government of Bihar and had been given loan from the State Government from time to time for developing and promoting electronic based industries in the State and in its turn had given loan to the Beltron Group of Companies for setting up joint venture/project in terms of its object for promoting and developing electronic based industries in the State. In the said facts, the Tribunal relied upon an earlier decision of the ITAT, Patna Bench dated 03.08.2007 in I.T.A. No.165/Pat/06 and 404/Pat/06 for the assessment year 2002-2003 in the assessee's own case.

5. After referring to the findings in the said order, the Tribunal also relied upon the decision of the Supreme Court in the case of S.A. Builders Vs. ACIT: [2007] 288 ITR 01 (SC) wherein it was held that interest on barrowed capital by the assessee is to be allowed even if assessee has not charged any interest on the advances given by it out of such borrowed funds if such advances are for business purpose. It was held by the Supreme Court that such interest on borrowed funds by the assessee ought to be allowed as deduction under Section 36 (1) (iii) of the Income Tax Act; only an enquiry should be made in such circumstances as to whether the loan was given by the assessee as a measure of commercial expediency. The relevant part of paragraph 36 of the judgment of the Supreme Court in S.A. Builders (supra) is quoted below :-

> "We wish to make it clear that it is not our opinion that in every case interest on borrowed loan has to be allowed if the assessee advances it to a sister concern. It all depends on the facts and circumstances of the respective case. For instance, if the directors of the sister concern utilize the amount advanced to it by the assessee for their personal benefit, obviously it cannot be said that such money was advanced as a measure of commercial expediency. However, money can be said to be advanced to a sister concern for commercial expediency in many other circumstances (which need not be enumerated here). However, where it is obvious that a holding company has a deep interest in its subsidiary and hence if the holding company advances borrowed money to a subsidiary and the same is used by the subsidiary for some business purposes, the assessee would, in our opinion, ordinarily be entitled to deduction of interest on its borrowed loans."

6. Learned counsel for the appellant is unable to show as to how the decision of the Apex Court in the case of S.A. Builders (supra) does not apply in the matter before us.

7. In the aforesaid circumstances, we find no reason to interfere with the order of the Tribunal. The appeal is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

(Vikash Jain, J)

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