IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 2.2.2015

CORAM

THE HON'BLE MR.JUSTICE R.SUDHAKAR
AND
THE HON'BLE MRS.JUSTICE S.VIMALA

T.C.(A).No.1342 of 2007

Commissioner of Income Tax
Chennai. .. Appellant/Respondent

Vs.

Sundaram Finance Ltd.
21, Patullos Road
Chennai - 600 002. .. Respondent/Appearance

PRAYER: Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'C' Bench, Chennai, dated 10.4.2007 made in I.T.A.No.146/Mds/2003 for the assessment year 2000-2001.

Against the order of the Income Tax Appellate Tribunal C Bench in ITA No.146/Mds/2003 for assessment Year 2000-2001 dated 10.4.2007

Agaisnt the Order of the Income Tax Appeals V Chennai in ITA No.07/int/2003-04 dated 04.06.2003.

Against the Order of the Assistant Commissioner of Income Tax Company Circle VI (4) Chennai dated 31.3.2003 in GIR No./PAN:Su.048/AAACS4944A

For Appellant : Mr.T.Ravi Kumar
Senior Standing Counsel

For Respondent : Mr.Venkat Narayanan
for M/s.Subbaraya Aiyar

J U D G M E N T
(Delivered by R.SUDHAKAR, J.)

The assessee has filed this appeal assailing the order of the Income Tax Appellate Tribunal 'C' Bench, Chennai, dated 10.4.2007 made in I.T.A.No.146/Mds/2003 for the assessment year 2000-2001 and the same was admitted on the following question of law:

> Whether the Tribunal was right in holding that interest tax cannot be charged on interest received on trade advances?

2.1. The brief facts of the case are as under: The assessee is a finance company. It received interest on advances made for the purchase of goods. During the relevant assessment year, the assessee company has recognised a sum of Rs.3,61,98,668/- as interest on trade advances. The claim of the assessee that the interest earned is not on loans and, therefore, interest tax is not exigible was rejected by the Assessing Officer and accordingly, the interest earned by the assessee was brought to tax.

2.2. Aggrieved by the said order, the assessee appealed to the Commissioner of Income Tax (Appeals), who, confirmed the order passed by the Assessing Officer.

2.3. Calling into question the said order, the assessee preferred appeal before the Tribunal. The Tribunal, following the earlier order passed in the assessee's own case for the assessment year 1994-1995, allowed the appeal filed by the assessee.

2.4. Challenging the above said order passed by the Tribunal, the revenue has preferred this appeal on the question of law, referred supra.

3. We have heard Mr.T.Ravikumar, learned Senior Standing Counsel appearing for the revenue and Mr. Venkat Narayanan, learned counsel appearing for the assessee and perused the orders passed by the Tribunal and the authorities below.

4. The main contention of the learned counsel for the assessee, which has been accepted by the Tribunal, is as follows:

> "The assessee had paid the advance amount to the manufacturer/dealer towards the purchase of machinery in connection with hire-purchase/lease. On account of the delay in the delivery of goods, on the advance made, the assessee received interest from the manufacturer. Interest thus due on the advance was later on adjusted on the price payable by the assessee for the said goods/machinery. Thus, at the time of advancing the money, it was never the intention of the assessee or the recipient to treat it as a loan. Thus, the advance could not be treated as loan to attract the provisions of the Interest-tax Act."

5. A Division Bench of this Court in Commissioner of Income Tax v. Integrated Finance Co. Ltd., (2011) 339 ITR 391, considered a similar plea raised by the assessee and held as under:

"12. Keeping this distinction in the background, as already pointed out, the case of the assessee herein is that it advanced money to the manufacturing company for the purchase of the machinery. On the advance thus made, for the delay in delivery, the manufacturing company was stated to have paid interest. The advance paid was adjusted against the purchase price. Thus the advance paid to the supplier was not for earning interest to be repaid at a later point of time. The Revenue does not deny this that the amount given was a trade advance towards the purchase of machinery and the interest amount was adjusted against the cost of goods supplied. The Revenue also does not dispute the fact that the intention of the assessee when the assessee advanced the amount was not for earning interest or for repayment of the amount given as advance, but towards the purchase of machinery."

The Division Bench, on the facts of the said case, held as under:

"19. Going by the facts, we hold that the assessee's case does not fall for consideration under sub-clause (iv) of Section 2(5B). The assessee is a credit institution. As a finance company engaged in hire purchase and leasing transaction, the assessee also does not deny that its activities in respect of financing, falls for consideration under sub clause (iv). The Assessing Officer has assessed the transactions relating to hire purchase financing. However, as rightly pointed out by the assessee, when the payment of money as advance was towards the purchase of machinery, there exists a distinct feature from all those transactions of financing on hire purchase and leasing that an exception has to be made in respect of the amount advanced by the assessee for the purpose of purchase of machinery. On the delay in delivery, the manufacturer had paid interest. As already pointed out, going by the fact - a fact which is not disputed by the Revenue, that the amount given by the assessee was towards the purchase of machinery as advance, we hold that the case of the assessee does not fall for consideration under sub-clause (iv) of Section 5(B). Going by the definition therein, we hold that the trade advance given does not fall under the phrase loan or advance or otherwise so as to cover the nature of transactions herein."

6. That apart, in the assessee's own case for the earlier assessment years, Division Benches of this Court answered the very same question of law against the Revenue and in favour of the assessee (Judgment dated 20.7.2012 in T.C.(A) Nos.1147 and 1148 of 2006 and judgment dated 7.4.2014 in T.C.(A) No.494 of 2007).

7. The learned Senior Standing Counsel appearing for the Revenue fairly concedes that the question of law raised is covered by the decisions referred supra.

In view of the law enunciated in the decisions referred supra, this appeal is dismissed by answering the question of law against the Revenue and in favour of the assessee. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

1. The Assistant Registrar,
Income Tax Appellate Tribunal, Besant Nagar,
Chennai Bench "C", Chennai.

2. The Commissioner of Income Tax (Appeals) - V
Chennai.

3. The Assistant Commissioner of Income Tax
Company Circle VI(4), Chennai.

1 cc to Mr.Venkat Narayanan ,Advocate, SR.No.5854

T.C.(A).No.1342 of 2007

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