IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 30.10.2015.

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE T.MATHIVANAN

T.C.(A) No.2718 of 2006

Commissioner of Income tax,
Chennai. Appellant

vs.

M/s.Magunta Investments (P) Ltd.,
Mass Towers, No.74,
Bazullah Road,
T.Nagar, Chennai-17. Respondent

Tax Case (Appeal) against the order of the Income Tax Appellate Tribunal Madras 'A' Bench, dated 23.6.2006.

For appellant : Mr.A.P.Srinivas

For Respondent : Dr.Anita Sumanth

JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN, J. )

This appeal, under section 260A of the Income Tax Act, is by the Revenue raising the following three questions of law:-

"1) Whether in the facts and circumstances of the case, the Tribunal was right in granting relief in excess of what was claimed by the assessee in its return?

2) Whether in the facts and circumstances of the case, the Tribunal was right in holding that the interest paid to the bank for a loan was to be allowed, after giving a finding of fact that a substantial amount was given to the sister concerns as an interest free loan?

3) Whether in the facts and circumstances of the case, the Tribunal was right in granting deduction of interest, when the amount borrowed was not for its own business expediency, but that of its sister concern?"

2. Heard Mr.A.P.Srinivas, learned Standing Counsel for the Department and Dr.Anita Sumanth, learned counsel for the respondent/assessee.

3. The assessee is an Investment Company. It appears that the assessee is in the habit of granting interest free loans to its own group companies and also receiving interest free loans from the group companies. They also take loan from banks for the purpose of

granting interest free loan to its own group companies. For the assessment year 1997-98, the assessee filed a return of income. The return was processed under section 143(1)(a) and a notice was issued under sub section (2).

4. The assessee had claimed in the return that they had received interest free loan of Rs.17.28 crores and had given advance to the tune of Rs.12.63 crores. They claimed to have paid interest of Rs.17,66,707/- to the Global Trust Bank Limited on a loan taken from the bank.

5. By the order of assessment dated 22.3.2000, the assessing officer refused to allow the interest paid by the assessee to the Global Trust Bank on the ground that it was not used for the business purpose. As against the said order, the assessee filed first appeal before the CIT (Appeals).

6. The Commissioner of Income Tax (Appeals), by order dated 22.12.2000, held that collecting interest free loans from group concerns and advancing the same to other group concerns cannot be considered as business activity and that only a portion of the borrowed funds had been used for earning income. In effect, the first appellate authority came to the conclusion that only a portion of the borrowed

funds had been utilised for earning income. On that basis, the first appellate authority came to the conclusion that it is only that portion of the borrowed funds, which were employed for business activities, which could be entitled to deduction. As a consequence of such a conclusion, the appeal of the assessee was partly allowed by the first appellate authority.

7. To the extent the first appellate authority granted a relief, the Department did not file a further appeal. But, the assessee filed a further appeal claiming that the entire amount of Rs.17,106,707/- paid by way of interest to the Global Trust Bank should be allowed to be deducted and that the order of the Commissioner of Income Tax restricting the allowance to Rs.4,56,050/- was wrong. By order dated 23.6.2006, the Tribunal allowed the appeal on the ground that the assessee had actually received Rs.17.28 crores as interest free advances and used 4.65 crores for business purposes. Therefore, the Tribunal held that the amount of Rs.4.65 crores is to be treated as the amount used in business and the interest on this amount will be eligible as deduction. Aggrieved by the said order and contending that the Tribunal had virtually granted more relief than what the assessee had claimed even before the first appellate authority, the Department

is on appeal.

8. Since the first question of law is virtually one which would hinge upon the factual position viz., as to whether the Tribunal had granted a relief in excess of what was claimed by the assessee, we directed the Department to file a statement as to the effect of the order of the Tribunal. Today, the learned Standing Counsel filed a statement. As per the statement, if the assessee's case before the first appellate authority had been allowed in full, the assessee would have been allowed a deduction to the extent of Rs.17,66,707/-, which was the interest paid to the Global Trust Bank. But, according to the Department, the finding of the Tribunal that the assessee had utilised a sum of Rs.4.65 crores in the business activities would entitle them to a benefit of Rs.37,66,000/-.

9. But, the above contention of the Department is refuted by the learned counsel for the assessee on two grounds viz., (a) that as per financials of the company, the amount of Rs.2,05,39,623/- represented the bank balance and (b) that in any case, the benefit could be restricted to what the appellant claimed before the first appellate authority.

10. Once the assessee takes a positive stand that they do not

want any benefit more than what they claimed before the first appellate authority, the first question of law need not be answered at all.

11. Insofar as questions 2 and 3 are concerned, we do not think that the Department will be entitled to raise those questions after having allowed the finding recorded by the first appellate authority to attain finality. The second and third questions raised for our consideration are as to whether the interest paid to a bank on a loan taken by the assessee, could be allowed when the loan was just given as interest free advances to the group concerns without employing the funds for the business activity. There are two aspects of the matter. When the assessee is an Investment Company by themselves, it is needless to point out that the loans and advances given by the assessee to the group concerns could come from either their own sources or the borrowings made by them. We do not know how the grant of interest free loans to group concerns could be treated as not forming part of business activity of an Investment Company. In any case, the Commissioner of Income Tax (Appeals) has recorded a finding in para 3 of the order that the assessee was utilising mixed funds (their own as well as borrowed) for the purpose of its business

activities. This finding has not been challenged by the Department. Therefore, the Department is not entitled to raise questions of law 2 and 3 after having allowed the finding of the Commissioner of Income Tax (Appeals) to attain finality.

12. In the result, the Tax Case Appeal is disposed of clarifying that while giving effect to the order of the Tribunal, the Department shall not grant more benefit than what actually the assessee sought viz., the allowance of deduction to the extent of Rs.17,66,707/- which represents the interest paid by them to the Global Trust Bank. No costs.

(V.R.S.,J.) (T.M.,J.)
30.10.2015.

Index: Yes/No.
Internet: Yes/No.
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To

Income Tax Appellate Tribunal
Madras 'A' Bench

V.RAMASUBRAMANIAN, J.
AND
T.MATHIVANAN, J.

Ssk.

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