

THE HON'BLE SRI JUSTICE DILIP B.BHOSALE

AND

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

I.T.T.A.No.44 of 2001

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JUDGMENT: (per the Hon'ble Sri Justice Dilip B.Bhosale)

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This appeal under Section 260-A of the Income Tax Act, 1961 (for short 'the Act') is directed against the order of the Income Tax Appellate Tribunal, Hyderabad Bench in I.T.A.No.1402/H/97, dated 22.09.2000, for the assessment year 1992-93.

By this order, the Tribunal allowed the appeal filed by the assessee holding that the issue regarding assessability of interest income of Rs.65,64,740/- received by the respondent-assessee from the deposit of share application monies in the bank, before commencement of the business, is not an issue to be decided on the basis of a *prima facie* adjustment made under Section 143(1)(a) of the Act and/or is debatable or complex one, which cannot be decided by applying the law laid down in **Commissioner of Income Tax v. Derco Cooling Coils Limited**.

It is against this backdrop, the revenue has filed the instant appeal raising the following substantial question of law:

“Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the adjustments made by the Assessing Officer are debatable, in spite of the issue being settled by the jurisdictional High Court, before the date of the order passed by the Assessing Officer under Section 143(1)(a) of the Act?”

The respondent – assessee is an Export Oriented Undertaking carrying on the business of manufacture of resin poly lenses. The assessee - company had filed its return of income for the assessment year 1992-1993 declaring 'nil' income. The

return was filed on 31.03.1993. The appellant - company had filed a detailed covering letter along with its return of income stating as follows:

“Sub:- Filing of return of income for the assessment year 1992-93.

We are herewith filing a return of income for the Assessment Year 1992-93 disclosing Nil Income. It is submitted that the Company has not set up its business nor has commenced production and still it is in the process of setting up the project. During the year under consideration the company received an interest income of Rs.65,64,736.30.

1) Amount received as interest on share capital Rs.20,23,874.30

2) Amount received as interest on oversubscribed amount.

Rs.45,40,862.00

We are advised that the said interest is not taxable on the basis of a legal opinion obtained by us. We also would like to submit that the facts of the case of AP High Courts decision in the case of Derco Cooling Coil is not applicable to us.

We also would like to submit that even assuming without admitting that a part of the interest is taxable, a reasonable amount of expenditure should be allowed. In view of this we submit that no income is taxable. Hence, we are filing a Nil return of Income.”

The Assessing Officer while processing the return of income under Section 143(1) (a) of the Act, made a *prima facie* adjustment and added interest amount of Rs.65,64,740/- as income of the appellant -company under the head ‘income from other sources’. On the basis of the *prima facie* adjustment, the Assessing Officer levied additional tax under Section 143(1)(a) and interest under Sections 234A and 234B of the Act. The Commissioner of Income Tax (A)-V, Hyderabad, dismissed the appeal filed by the respondent – assessee vide its order dated 31.07.1997. Against that order, the Tribunal allowed the appeal vide order, dated 22.09.2000 holding as aforementioned. The relevant observations made by the Tribunal, while allowing the appeal, in paragraphs 8 and 11 read thus:

“8. We heard both sides in detail. We are not actually concerned in this case with the question whether the interest income earned by the assessee-company through short-term deposits of share application money kept in bank, was taxable as income or not in the pre-production period. In fact, recently, we have decided a similar issue in the case of Asian Coffee Limited in ITA No.175/Hyd/95 by our order dated 12.07.2000. In that case we have held against the assessee, observing that the

interest received by the assessee-company on short term bank deposits made out of amount collected due to over-subscription of share-capital is income assessable to tax. To arrive at that decision, we have mainly relied on the decision of the Hon'ble Supreme Court in Tuticorin Alkalies case (227 ITR 172). But, in this case, the question whether such interest received by the assessee-company was taxable as income or not, is not the issue for consideration before us. The issue really involved in this case is whether such income could be brought to tax as income, by way of prima-facie adjustment, contemplated under S.143(1)(a). In the case mentioned by us, decided by the Tribunal in Asian Coffee Limited (ITA No.175/Hyd/95), the Tribunal had to examine and discuss the issue at length. It had extensively discussed the issue in the light of various case-laws on analogous concepts, including the decisions of the Hon'ble Supreme Court in Tuticorin Alkalies (227 ITR 172), Bokaro Steel Limited (236 ITR 315) and Challapalli Sugar Works (98 ITR 167), and the decisions of the jurisdictional High Court in Derco Cooling Coils Limited (supra). It is only on such an elaborate discussion, that the Tribunal has come to a conclusion in that case that interest income received by a company during pre-production period on short-term bank deposits made out of excess subscription money on issue of share capital, is assessable as income under the head 'income from other sources'. The detailed examination of the matter made in that case, clearly shows that the issue involved is a complex one, and cannot be straightaway decided by applying a particular case law available on the subject. One has to examine the real nature of the receipt, in the light of the facts and circumstances of the case. This position itself declares that the issue cannot be decided conclusively on the basis of a decision, without first resorting to examination of the facts of the case leading to the proposition. Therefore, at the outset itself, we feel that the issue is a highly debatable one.

11. In the circumstances, in the light of the above discussion, we find that the issue of taxability of interest received by the assessee-company, which is subject to appeal, is not an issue to be decided by the assessing officer through a prima facie adjustment made under S.143(1)(a) of the Act. In order to treat the interest amount as income liable to tax, the assessing officer has to examine the facts of the case, along with the alternative submission of the assessee for allowance of incidental expenses, in the light of the available case laws. In this view of the matter, we find that the addition made by the assessing officer through prima facie adjustment, treating the interest received by the assessee, as income liable to tax, has to be deleted. Consequently, the additional tax and interest in relation to that addition also have to be deleted. We accordingly set aside the orders of the lower authorities on this issue, accepting the contentions of the assessee in this appeal.”

From a bare perusal of facts and in particular covering letter of the respondent – assessee, reproduced while narrating the facts, would show that the respondent – assessee had admitted that during 1992-1993, they had received an interest income of Rs.65,64,736.30 and they also gave its break up as follows: (1) the amount received as interest on share capital Rs.20,23,874.30, and (2) the amount received

as interest on the over subscription amount of Rs.45,40,862/-.

It is thus clear that the nature of the receipts in the form of interest was not at all in dispute. The Tribunal, therefore, erred in observing that one has to examine the real nature of receipts, in the light of the facts and circumstances of the case. The findings recorded by the Tribunal to hold that the issue involved is a complex one and it requires long drawn process for determining the nature of receipts, is wrong and deserve to be set aside.

Hence, we allow this appeal answering the question in favour of the revenue and against the assessee. We make it clear that we could have decided the issue raised before the Tribunal also but in the absence of the assessee we do not feel it proper to do so and hence we remand the matter to the Tribunal for its consideration afresh, in the light of the judgments relied upon by the revenue after giving an opportunity of being heard to the respondent – assessee. No order as to costs.

Consequently, miscellaneous petitions, if any, also stand disposed of.

DILIP B.BHOSALE,J

A.RAMALINGESWARA RAO,J

Dt:15.04.2015

GJ

