THE HON'BLE SRI JUSTICE DILIP B.BHOSALE

AND

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

I.T.T.A.Nos.102, 85 and 86 of 2005

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

These three income tax appeals under Section 260A of the Income Tax Act, 1961 (for short 'the Act') arise from the orders passed by Income Tax Appellate Tribunal, Hyderabad Bench 'B', all dated, 22.02.2000, passed in the appeals filed by the appellants-assessee. The Tribunal dismissed all the appeals and affirmed the orders of the Commissioner of Income Tax (Appeals), confirming the disallowance of interest of Rs.24,511/-, Rs.94,981/- and Rs.94,328/- respectively for the assessment year 1990-91.

The appellants claimed deduction of the aforementioned interest amounts for the assessment year 1990-91, as provided for under Section 57 (iii) of the Act, on the borrowed capital claiming it to be an expenditure, not being in the nature of capital expenditure, laid out or expended wholly or exclusively for the purpose of making or earning such income from other sources.

The appeals were admitted on the following substantial question of law:

> "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in holding that the appellant was not entitled to deduct the interest paid on borrowings on the ground that it was not proved that the borrowed funds were utilized for earning income from the business?"

We have perused the orders passed by all the three

Authorities including the appellate Tribunal and find that the appellants' claim to deduct the amount of interest was rejected, holding that he did not prove/establish that the borrowed funds were utilized either for purchasing/selling shares or its trading. The appellants deal in sale and purchase of shares and their source of income is mainly from commission, brokerage, dividend and interest, which does not require any capital investment. Though it has come on record that the amount of interest was paid by the appellants on the amounts borrowed by them, they did not place any evidence/materials on record to show/establish that the funds were borrowed by them for earning income from their business of sale and purchase of shares. In other words, the appellants did not place any materials on record to show that the raised/borrowed capital/funds was/were invested in the business or utilized for the purpose of buying and selling of shares and earning income therefrom.

Learned counsel appearing for the appellants after inviting our attention to Section 57 (iii) of the Act and the judgment of the Supreme Court in **Commissioner of Income Tax, West Bengal-III Vs. Raghunandan Prasad Moody**[1] submitted that it is not necessary for the assessee to earn income in relation to the borrowings to claim deduction as provided for under Section 57 (iii) of the Act. The relevant paragraph in the judgment of the Supreme Court in **Prasad Moody**'s case (supra), relied upon by learned counsel for the appellants, reads thus:

> "What s. 57 (iii) requires is that the expenditure must be laid out or expended wholly and exclusively for the purpose of making or earning income. It is the purpose of the expenditure that is relevant in determining the applicability of s. 57 (iii) and that purpose must be making or earning of income. S. 57 (iii) does not require

> that this purpose must be fulfilled in order to qualify the expenditure for deduction. It does not say that the expenditure shall be deductible only if any income is made or earned. There is in fact nothing in the language of s. 57 (iii) to suggest that the purpose for which the expenditure is made should fructify into any benefit by way of return in the shape of income. The plain natural construction of the language of s. 57 (iii) irresistibly leads to the conclusion that to bring a case within the section, it is not necessary that any income should in fact have been earned as a result of the expenditure."

From a plain reading of the observations made by the Supreme Court in the aforementioned paragraph, it is clear that the proposition of law, tried to be urged on behalf of the appellants, would not help the appellants to take their case further, in view of the fact that there is nothing on record to show that the funds borrowed by the appellants were utilized for earning of income. As observed by the Supreme Court, it is the purpose of the expenditure that is relevant in determining the applicability of Section 57 (iii) and that purpose must be making or earning of income. Thus, what is necessary is to show/establish that the borrowing of funds was for the purpose of making or earning of income irrespective of the fact whether this purpose was fulfilled, in order to qualify the expenditure for deduction. In short, in order to claim deduction under Section 57 (iii) of the Act, it is necessary to show that funds were borrowed by the assessee for the purpose of investment in the business, such as buying and selling of shares with the purpose of earning of income. Unless this condition is satisfied, in our opinion, the claim for interest is not allowable. All the three Authorities in the present case have recorded a categoric finding of fact that the appellants could not and did not produce any evidence/material to establish that the funds borrowed were utilized for the purpose of earning income from the business of buying and selling of shares.

Though the appellants had ample opportunity before the Authorities below, no efforts what-so-ever were made by them to place any material on record in support of their contention. Even before this Court, when we asked the learned counsel for the appellants whether he has any material to show that the funds borrowed by the appellants were for earning income from their business, in all fairness, he submitted that he does not have any such material in support of his contention.

In the circumstances, we find no merit in these appeals and accordingly, we answer the substantial question of law in favour of the Revenue and against the appellants/assessee. No costs. Consequently, miscellaneous petitions, if any, also stand disposed of.

DILIP B.BHOSALE,J

A.RAMALINGESWARA RAO,J

Dt:20.01.2015

kdl

---

[1] 115 ITR 519