IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

INCOME TAX APPEAL NO. 97 OF 2013

(The Commissioner of Income Tax - 1, Nagpur vs. Shri Rajeev Kamalkishore Biyani, Akola)
AND

INCOME TAX APPEAL NO. 103 OF 2013

(The Commissioner of Income Tax - 1, Nagpur vs. Shri Rajeev Kamalkishore Biyani, Akola)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI &
V.M. DESHPANDE, JJ.
JANUARY 04, 2016.

Heard Shri Mohata, learned counsel for the appellant - revenue and Shri Dewani, learned counsel for the respondent – assessee.

Shri Dewani, learned counsel, at the threshold drawn our attention to circular dated 10.12.2015 and the orders of this Court at Bombay dated 17.12.2015 in Income Tax Appeal No. 240 of 2001 (*The Commissioner of Income-Tax, Nashik vs. M/s. Shivshakti Construction, Bhusawal*).

Without prejudice, he submits that the issue is covered by the orders of this Court dated 11.06.2014 in ITL No. 221 of 2012, which have been maintained by the Hon'ble Apex Court while dismissing SLP (C) No. 20334 of 2014 on 12.12.2014.

Shri Mohata, learned counsel, however, states that as there are two appeals and the ITAT has passed the common order for two assessment years, in terms of paragraph 2 of the above circular, these appeals are maintainable. On merits, he points out that though the assessee operates under three different propriety concerns, after borrowing a loan from the Nationalized Bank, he has advanced it to number of other concerns. The other concerns have not paid interest to him. The assessee has shown even recovery of principal amount as doubtful and few debts have been written off as bad debts. As the assessee was maintaining mercantile system of accounts, interest becoming due ought to have been reflected and thereafter appropriate treatment should have been extended to it. In this situation, as the assessee has not shown the interest due in his accounts, the Assessment Officer has found that the amounts taken on loan by the assessee were not used for business purposes and hence the claim for deducting interest paid by the assessee to the Nationalized Bank on that loan has been disallowed. He contends that this fact is lost sight of by the CIT as also by ITAT. He seeks support from the judgment of the Delhi High Court in the case of *Commissioner of Income-tax, Delhi vs. Mission Viejo Agro (P.) Ltd*., reported at (2007) 163 Taxman 178 (Delhi), to urge that when there is a finding that loan has not been used by the assessee for his business, the deduction under Section 36(1)(iii) of the Income Tax Act, 1961, is not available.

Shri Dewani, learned counsel submits that books of accounts maintained by the assessee are not in dispute. The names of assessees to whom loan amount has been advanced are recorded therein. The fact that loans were advanced to those assessees in the course of business is borne out from the books of accounts. The opening balance, the amounts paid back and closing balance are are all noted by the Assessing Officer. He argues that in this situation, had those assessees who could not pay back the amount, succeeded in paying back the interest amount, the Assessment Officer would have accepted the advance as business advance. He, therefore, states that merely because the other concerns/ assessees to whom the assessee advanced loan, could not pay back either principal amount or interest amount, that does not change the nature of advance. He places emphasis on the fact that the Assessment Officer does not record a finding that the amount advanced by the assessee to those concerns were not used for business purpose.

We have perused the affidavit. The assessment order does not show that the amount advanced by the assessee to other concerns was not in furtherance of his business. The books of accounts have been accepted and the opening balance against those concerns in the relevant assessment years, payments made, are all mentioned in the assessment order itself. It is not the case of the appellant – department that there were no other concerns and advances were made to only concerns, who later on expressed their inability to pay and, therefore, loan was required to be written off. In fact, we find that the bonafides of action in writing off of irrevocable loans is not disputed before us.

In this situation, as there is nothing on record to indicate that loans were not advanced for the business purposes, we are not in a position to co-relate the advance by the assessee to those concerns and not earning of interest upon it with the obligation to pay interest to Nationalized Bank, cast upon the assessee as he borrowed loan from that bank. The assessment order also does not contain any reasons to establish any such relation.

In view of these findings, the above mentioned judgment of Delhi High Court has no application in present facts.

There are two appeals before this Court. In ITL No. 97 of 2013, the assessment year involved is 2007-08 and even if case of revenue is accepted, the tax demand works out to Rs.15,59,749/-. In ITL No. 103 of 2013, the assessment year involved is 2006-07 and tax demand is Rs.17,42,871/-.

The circular dated 10.12.2015 mentioned supra vide its clause 5 contemplates need of filing an appeal against composite adjudication, if in any one of the assessment years involved therein, the tax effect is in excess of Rs.20 lakh. We are, therefore, not in a position to accept the submission of Shri Mohata, learned counsel that in case of composite order, the appeal can be filed ignoring the monetary limit mentioned in the said circular.

In the light of discussion above, as we do not find that any substantial question of law arises, both the Income Tax Appeals are rejected. No costs.

JUDGE **JUDGE**

*GS.