IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Tax Case(Appeal) No.1034/2007

The Commissioner of Income Tax
Chennai. .. Appellant

-vs-

M/s.Fidelity Textiles P Ltd.,
18, III Main Road
CIT Nagar Extension
Nandanam, Chennai 600 035. .. Respondent

TAX CASE filed under Section 260 A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, MADRAS 'A' Bench, Chennai dated 14.11.2006 passed in ITA.No.1960/Mds/2005.

For Appellant	:	Mr.A.P.Srinivas
For Respondent	:	Mr.R.Kumar

J U D G M E N T

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

This Tax Case Appeal filed by the Revenue, was admitted on 11.07.2007 on the following questions of law:-

"[1] Whether in the facts and circumstances of the case, the Tribunal was right in holding that the amount of loan waived does not constitute the income of the assessee in the context of Section 28[iv] of the Act?

[2] Whether in the facts and circumstances of the case, the remission of the loan borrowed for the purpose of purchasing a capital asset does not amount to a casual and non-recurring receipt in the hands of the assessee?"

2 Heard Mr.A.P.Srinivas, learned Standing Counsel appearing for the appellant/Department and Mr.R.Kumar, learned counsel appearing for the respondent / assessee.

3 The brief facts out of which the above appeal arises are that a British National and two Indian citizens, joined together and floated a Limited Company. The British National brought in foreign funds to the tune of Rs.2,95,00,000/-. After some time, the British National entered into an agreement with the other two persons, on 26.06.2000. Under the said agreement, the British National agreed to waive the loan amount that he advanced to the assessee Company in return for a promise that no liability arising out of non-fulfillment of export obligations should be fastened on him.

4 Considering the said term contained in the agreement to be a *quid pro quo*, the Assessing Officer treated the loan amount as revenue income for the company. The same was confirmed by the Commissioner of Income Tax [Appeals] ; but, reversed by Income Tax Appellate Tribunal. Hence, the Revenue is on appeal.

5 Mr.A.P.Srinivas, learned Standing Counsel relies upon the decision in *CIT Vs. T.V.S. SUNDARAM IYENGAR AND SONS LIMITED* reported in **[1996] 88 TAXMAN 429 [SC]**. However, Mr.R.Kumar, learned counsel appearing for the respondent / assessee relies upon the decision in *ISKRAEMECO REGENT LIMITED Vs. COMMISSIONER OF INCOME TAX* reported in **[2011] 331 ITR 317 [Mad]**.

6 Insofar as the decision in *TVS Sundaram Iyengar and Sons Limited* is concerned, the same arose out of admitted facts to the effect that the assessee itself treated the money as its own and took it to the Profit and Loss Account. Paragraph 23 of the said decision reads as follows:-

> "**23** In the present case, the money was received by the assessee in course of carrying on his business. Although it was treated as deposit and was of capital nature at the point of time it was received, by influx of time the money has become the assessee's own money. What remains after adjustment of the deposits has not been claimed by the customers. The claims of the customers have become barred by limitation. The assessee itself has treated the money as its own money and taken the amount to its profit and loss account. There is no explanation form the assessee why the surplus money was taken to its profit and loss account even if it was somebody else's money. In fact, as Atkinson, J, pointed out that what the assessee did was the common sense way of dealing with the amounts."

7 However, the Division Bench of this Court was concerned directly with the question that is raised as question of law No.2 in this case. The question was answered in favour of the respondent / assessee.

8 Therefore, we are of the considered view that the ratio in *TVS Sundaram Iyengar and Sons Limited* will not apply to the case on hand. The protection given to the British National by the agreement dated 26.06.2000, cannot be treated as a consideration. The Customs Department was not bound by such an undertaking given by the two Indian Nationals. At the most it was a promise on the part of the Indian Nationals to protect the British National against any claim from the Customs Department. It was a promise to hedge the risk that may fall upon the British National.

9 Once the loan is written off and the person writing off the loan, does not stand to benefit, in any concrete manner, except to the extent that he will be protected against any statutory claim, the same cannot be treated as revenue income. Therefore, the questions of law are answered against the appellant/Department.

10 The Tax Case Appeal is dismissed.

[V.R.S., J] [N.K.K., J]
24.02.2016

Index : Yes / No
Website : Yes / No
AP

V.RAMASUBRAMANIAN, J.,

AND

N.KIRUBAKARAN, J.,

AP

To
1.The Commissioner of Income Tax
Chennai.

2.M/s.Fidelity Textiles P Ltd.,
18, III Main Road, CIT Nagar Extension
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3.Income Tax Appellate Tribunal,
MADRAS 'A' Bench, Chennai.

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