

In the High Court of Judicature at Madras

Dated : 09.2.2016

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice N.KIRUBAKARAN

Tax Case Appeal Nos.2343 and 2644 of 2006

M/s.Industrial Feeders, Chennai-58.

...Appellant in
both appeals

Vs

The Assistant Commissioner of Income
Tax, Special Range III, Chennai.

...Respondent in
TCA.2343/2006

The Assistant Commissioner of Income
Tax, City Circle - VII(2), Chennai.

...Respondent in
TCA.2644/2006

APPEALS under Section 260A of the Income Tax Act, 1961 against (i) the order dated 17.3.2006 made in I.T.A.No.1598/Mds/1997 on the file of the Income Tax Appellate Tribunal, Madras 'A' Bench for the assessment year 1993-94 (TCA.No.2343 of 2006) and (ii) the order dated 13.6.2003 made in I.T.A.No.2219/Mds/1994 on the file of the Income Tax Appellate Tribunal 'A' Bench for the assessment year 1991-92 (TCA.No.2644 of 2006).

For Appellant : Mr.A.S.Sriraman for Mr.S.Sridhar
For Respondents : Mr.T.R.Senthilkumar

COMMON JUDGMENT

(JUDGMENT WAS DELIVERED BY V.RAMASUBRAMANIAN,J)

Both the above appeals, filed by the assessee, were admitted on 18.12.2006 on the following substantial questions of law :

"TCA.No.2343 of 2007 :

(i) Whether the Tribunal is correct in concluding that the disallowance of interest sustained in the earlier assessment year would equally apply to the assessment year under consideration in spite of the fact of binding precedents cited before them on the non applicability of the said decision to the assessment year under consideration ?

(ii) Whether the Tribunal is correct in concluding that the disallowance of interest on the average of opening and closing balances was correct in view of the diversion of interest bearing funds even though the opening balance should be taken into consideration for working out and making the disallowance of interest in view of the binding precedent cited, which decision was not cited/considered in the earlier order ? and

(iii) Whether the Tribunal is correct in concluding that the funds borrowed for business were diverted for non business purpose even though the accounts maintained duly audited had reflected totally a different picture in as much as the accounts relevant to consider the correctness of disallowance were never taken into consideration ?

TCA.No.2644 of 2006 :"

(i) Whether the Tribunal is correct in concluding that the funds borrowed for business were diverted for non business purpose even though the accounts maintained duly audited

had reflected totally a different picture in as much as the accounts relevant to consider the correctness of disallowance were never taken into consideration ?

(ii) Whether the Tribunal is correct in concluding that the notional interest disallowed @ 24% by the Income Tax Officer on the outstanding amount and not the amount inclusive of the opening balance and inclusive of the amount paid during the relevant previous year relevant to the assessment year under consideration ? and

(iii) Whether the Tribunal is correct in law in allowing the appeal of the Revenue without properly appreciating the written submissions of the appellant ?"

2. Heard Mr.A.S.Sriraman, learned counsel for the appellant and Mr.T.R.Senthilkumar, learned Standing Counsel for the Department.

3. For the assessment year 1991-92, the appellant/assessee filed its Form No.12 and they filed a return of income on 31.10.1991 admitting a total income of Rs.5,07,183/-. The return was processed under Section 143(1)(a) and a notice was issued under Sub-Section (2) of Section 143. The Assessing Officer found that the assessee had advanced a sum of Rs.16,07,809/- to one of its sister concerns by name M/s.Kriscast.

4. Since the net credit balance in the partners' capital accounts and current accounts was only Rs.2,95,644/-, the Assessing Officer treated the balance of Rs.13,12,164/- as out of interest bearing loans. Consequently, the Assessing Officer disallowed interest on the said amount at 24% per annum.

5. On appeal by the assessee, the Commissioner of Income Tax

(Appeals) found that what was lent during the relevant assessment year was only Rs.2,89,610/- and that therefore, interest on the said amount could be disallowed. Therefore, the Commissioner of Income Tax (Appeals) allowed the appeal in part and remitted the matter back to the Assessing Officer for re-computation of the quantum of disallowance. However, the Revenue appealed to the Income Tax Appellate Tribunal. But, by an ex parte order, the Tribunal allowed the appeal and restored the order of the Assessing Officer.

6. Similarly, for the assessment year 1993-94, the assessee filed a return of loss to the tune of Rs.4,57,005/-. The case was taken up for scrutiny. One of the items taken up was the interest on funds borrowed and diverted to the sister concerns, one of which was M/s.Kriscast. The Assessing Officer, by an order dated 29.3.1996, disallowed the interest on the amount so lent.

7. Following the same pattern as in the case of the assessment year 1991-92, the Commissioner of Income Tax (Appeals) allowed the appeal in part and limited the disallowance only to the quantum of loan advanced during the relevant assessment year. This order was also reversed by the Tribunal, but this time after hearing the arguments of both parties. In other words, the order of the Tribunal dated 17.3.2006 in respect of the assessment year 1993-94 was not an ex parte order. Hence, as against the orders of the Tribunal, restoring the original orders of the Assessing Officer,

the assessee has come up with the above appeals.

8. In both cases, the assessee was admittedly engaged in the business of manufacture of G.I. castings. It is also admitted that the concern, to which, interest free advances were paid, is the sister concern of the appellant. It is also not in dispute that the amount of interest free loans advanced during the relevant assessment year was lesser than the total amount now sought to be taken into account by the Assessing Officer.

9. Keeping the above admitted facts in mind, if we have a look at the orders of the three Authorities, it could be found that the only reason as to why the Authorities disallowed interest on the loans advanced by the assessee to its sister concerns, is the fact that the lending was for non business purposes.

10. But, a look at the orders of the three Authorities would show that there was no basis for the Authorities to come to the conclusion that the amounts were lent for non business purposes. M/s.Kriscast is obviously a casting company. The appellant is a manufacturer of G.I. castings. There was no indication about the nature of businesses that the appellant as well as the borrowers were engaged in. A finding made on thin air that the amounts were lent for non business purposes cannot be sustained. The assessment years are 1991-92 and 1993-94. Therefore, we have ventured to go into the merits of the case rather than sending the matters back to the Tribunal on the ground of failure to afford a reasonable opportunity.

V.RAMASUBRAMANIAN,J
AND
N.KIRUBAKARAN,J

RS

11. In the result, the appeals are allowed and the questions of law are answered in favour of the assessee. No costs.

09.2.2016

Internet : Yes

To

- 1.The Assistant Commissioner of Income Tax, Special Range III, Chennai.
- 2.The Assistant Commissioner of Income Tax, City Circle - VII(2), Chennai.
- 3.The Income Tax Appellate Tribunal, Madras 'A' Bench

TCA.Nos.2343 & 2644 of
2006