jsn

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1554 OF 2007

The Commissioner of Income Tax, Mumbai … Appellant
Versus
M/s. Lotus Investments Ltd. …Respondent

Mr. Suresh Kumar, for the Appellant.
Mr. P.C. Tripathi, i/b Atul Jasani for the Respondent.

CORAM: M.S.SANKLECHA &
RIYAZ I. CHAGLA, JJ.
DATED: 22ND JANUARY 2018

PC:-

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 16th March 2007 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order dated 16th March 2007 is in respect of Assessment Year 1997-98.

2. The Revenue urges the following question of law for our consideration:

> *(a) "Whether on the facts and in the circumstance of the case and in law, the Tribunal has erred in accepting the loans amounting to Rs.5,75,88,250/- as genuine and deleting it without any specific findings in this regard when as per the assessee's submissions before it in the form of charts A-1 and A-2, the loans accepted by the*

Assessing Officer, in the Remand Report, amounted to only Rs.3,32,76,250/-”?

(b) “Whether on the facts and in the circumstance of the case and in law, the decision of the Tribunal in deleting the loans amounting to Rs.3,19,77,000/- over and above the loans accepted by the Assessing Officer in Remand Report of Rs.3,32,76,250/- without any specific findings, renders, the decision of the Tribunal perverse and a substantial question of law arises”?

(c) “Whether on the facts and in the circumstance of the case and in law, the Tribunal has erred in deleting the proportionate interest on loans amounting to Rs.4,25,000/- and Rs.25,00,000/- respectively from Siddhivinayak Creations and Neptune Enterprises, on the ground that these were old advances and in the past, no disallowance of interest was made on these advances, which suggested that the Department had accepted the fact that these advances were given for the purpose of business”?

3. **<u>Re.: Question Nos. 1 and 2</u>**.

(a) The impugned order of the Tribunal while dealing with these questions placed reliance upon two charts namely annexure A-1 and A-2. The impugned order of the Tribunal states that both these charts are annexed to the impugned order and are to be treated as part of the impugned order.

(b) On 8th January 2018, when the Appeal was taken up for consideration, we noticed that the charts are not annexed to the impugned order which has been challenged by the Revenue before us. In the absence of the entire order being annexed to the Appeal memo, it would not be possible to consider whether these two questions give rise to any substantial question of law. In the above view, at the request of Mr. Suresh Kumar, the learned counsel appearing for the Revenue, the Appeal was adjourned to today.

(c) Today when the Appeal was called out Mr. Suresh Kumar for the Revenue states that inspite of his efforts to obtain the charts referred in the questions as A-1 and A-2 which form part of the impugned order are not made available to him. Mr. Suresh Kumar tenders the letter dated 10th January 2018 addressed by him to the Principal Commissioner of Income Tax (CIT) seeking the requisite charts. A copy of the aforesaid communication dated 10th January 2018 addressed by Mr. Suresh Kumar to the Principal CIT is annexed for identification as Exhibit “A”. Inspite of the above, the Revenue has not made available to Mr. Suresh Kumar, the necessary charts which form part of the impugned order.

(d) In the above view, it appears that the Revenue is not interested in prosecuting the above two questions of law. Thus the aforesaid two questions are not entertained.

4. **<u>Re. Question No.3</u>**.

(a) The Assessing Officer had disallowed the interest paid on borrowed amounts to the extent it made advances given to M/s. Neptune Enterprises and M/s. Siddivinayak Creations to the tune of Rs.25 lakhs and 4.25 lakhs respectively. This on the ground it is not made for business purpose.

(b) The Commissioner of Income Tax (Appeals) in Appeal upheld the order of the Assessing Officer to the extent of disallowance of interest paid on amounts borrowed to the extent of advances made to the above two parties on the ground that the same was not for business purposes.

(c) On further Appeal by the Respondent the impugned order of the Tribunal allowed the same by holding that the advances made to M/s. Neptune Enterprises and M/s. Siddivinayak Creations was for the purposes of business as the Respondent was found to be on facts in the business of acquiring Satellite and Overseas rights of films and CDs. These advances were for acquiring satellite and overseas business. In fact in the past also the impugned order holds that the Revenue had accepted advances made to these enterprises as being done for business purposes. Therefore no occasion to disallow interest paid on the amounts borrowed to the extent of advances made to M/s Nepture Enterprises and M/s Siddivinayak Creations can arise.

5. We note that the finding of the Tribunal is essentially a finding of fact. This finding of fact has not been shown to be perverse and / or arbitrary in any manner. In view of the above, the questions as framed do not give rise to any substantial question of law. Thus not entertained.

6. Accordingly, **Appeal dismissed.** No order as to costs.

(RIYAZ I. CHAGLA J.) **(M.S.SANKLECHA,J.)**