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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 3rd September, 2012.

+ ITA No.107/2012

CIT

..... Appellant

Through : Mr.Deepak Chopra, Sr.Standing Counsel with
Mr.Harpreet Singh Ajmani, Advocate.

versus

BRAHMAPUTRA CAPITAL & FINANCIAL
SERVICES LTD.

..... Respondent

Through: None

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE R.V. EASWAR

R.V. EASWAR, J: (OPEN COURT)

This is an appeal by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act' for short) and the following substantial questions of law are sought to be raised:-

“(A) Whether the order of the Tribunal is perverse since it fails to take note of the changed facts for the year under consideration?”

“(B) Whether the Tribunal erred in not appreciating that the whole basis of the assessee not recognizing interest income from such loans was that the borrowers were in a weak financial position whereas in the year under consideration the AO found that the borrowers had made huge profits and as such these loans could not be treated as non-performing assets?”

2. The assessee is a non-banking finance company registered with the Reserve Bank of India. In the return of income filed for the assessment year 2007-08, it claimed that it was not assessable in respect of any interest on the loans advanced by it in the previous years relevant to the assessment years 1996-97 and 1998-99, on accrual basis, since there was a resolution of the Board of Directors dated 4th March, 2004 not to charge interest in respect of those loans having regard to the financial difficulties in which the debtor-companies were placed. It was also claimed before the Assessing Officer that the claim of the assessee was accepted by the Income Tax Appellate Tribunal ('Tribunal' for short) in the assessment years 2003-04 to 2006-07. The Assessing Officer examined the facts for the year under appeal and found that the companies to whom the assessee advanced loans were financially well off. He noticed from the balance sheets of the companies that they were making profits for the year under appeal and, therefore, the assessee was no longer justified in not charging interest on the loans to them. The details of the loans and the amount of interest on them for the year under appeal are as under:-

S.No.	Name of the Party	Amount of loan	Rate of interest	Amount of interest declared or not
1.	Jindal Equipment Leasing & Consultancy Services Ltd.	7,32,72,000	16%	1,17,23,520
2.	Mansarovar Investment Ltd.	5,10,17,630	16%	81,62,820
3.	Goswamis Credits & Inv. Ltd.	1,14,97,427	14.5%	16,67,126
	Total Interest			2,15,53,466

In the aforesaid view of the matter, the Assessing Officer added the sum of Rs.2,15,53,466/- as interest on the loans.

3. The CIT(Appeals), before whom the assessee filed an appeal noticed that the debtor-companies were not loss making companies in the relevant previous years, that they were actually making profits and in this view of the matter, he held that the Assessing Officer was justified in charging interest. He accordingly dismissed the assessee's appeal. In his order, the CIT(Appeals) also noted that the Tribunal had decided the dispute in favour of the assessee for the assessment years 1997-98 and 1998-99 because in those years the borrowing companies were in a bad financial position making it impossible to realize any interest from them, whereas that fact-situation does not obtain in the year under appeal in which the borrowing companies were making handsome profits. He noted that the following are the details of the profits earned by the borrowing companies in the year ended 31st March, 2007;

(1) Jindal Equipments Leasing and Consultancy Services Ltd. Rs. 8,92,006/-

(2) M/s Mansarovar Investment Ltd. Rs. 4,30,73,328/-

These companies also had reserves and surplus amount to Rs. 73.23 crores and Rs.23.95 crores respectively as on 31st March, 2007. In this view of the matter, the CIT(Appeals) confirmed the addition of the interest and dismissed the appeal.

4. The further appeal filed by the assessee before the Tribunal was, however, allowed. The Tribunal reiterated its earlier view taken in respect of the assessment years 2003-04 to 2006-07. The Tribunal, in doing so, adverted to the contention of the Revenue that the facts for the year under appeal were distinguishable. Nevertheless it proceeded to observe that “ *it has not been disputed that the facts and circumstances in the present year and earlier years are same. In view thereof, we are unable to accept the plea of the Ld. DR that facts are distinguishable in this year and a view*

different from the one taken by the Hon'ble Delhi High Court should be adopted. The facts and circumstances being similar, Hon'ble Delhi High Court having clearly held that the impugned interest income in this case cannot be recognized for these years, respectfully following and the addition made on this account is deleted.”

It may be noted from the above observations of the Tribunal that the order of the Tribunal for the earlier years was confirmed by the judgment of this Court dated 18th May, 2011.

5. The Revenue is in appeal before us to contend that the Tribunal overlooked the contention of the department that the facts for the year under appeal are distinguishable from those obtaining in the years in which the High Court had held in favour of the assessee. It is submitted by Mr. Deepak Chopra, the learned Standing Counsel for the Revenue, that despite adverting to the submission of the department, the Tribunal erroneously proceeded to hold that there was no dispute that the facts and circumstances in the present year were the same as in the earlier years. This observation of the Tribunal, according to Mr. Chopra, vitiated the finding of the Tribunal and its decision is liable to be struck down as perverse.

6. There is no appearance on behalf of the assessee, despite service of notice.

7. The point urged by the Revenue deserves to be accepted. The Assessing Officer as well as the CIT(Appeals) have brought on record the facts to show that the financial condition of the borrowing companies was sound which was not the case in the assessment years 2003-04 to 2006-07 in which years the Tribunal and the High Court had held that the assessee was justified in not taking credit for any interest from these companies, despite following the mercantile system of accounting, because of the poor financial position of those companies. The factual position for the year under appeal is different and this has been brought out well both in the assessment order and in the first appellate order. The Tribunal ought to have paused to consider the

statement of the department before it to the effect that the facts for the year under appeal were distinguishable and, therefore, the earlier orders of the Tribunal and the judgment of the High Court, though in the assessee's own case, cannot be mechanically applied. Unfortunately this aspect was completely missed by the Tribunal. We, therefore, answer both the substantial questions of law raised by the Revenue in the affirmative and in its favour. There shall be no order as to costs.

R.V. EASWAR, J.

S. RAVINDRA BHAT, J.

September 03, 2012
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