**IN THE HIGH COURT OF BOMBAY AT GOA**

**TAX APPEAL NO.2 OF 2019**

The Principal Commissioner
of Income Tax, Panaji. …. Appellant
V/s
Sesa Industries Ltd. …. Respondent

Ms. Susan Linhares, Standing Counsel for the Appellant.
Mr. R.G. Ramani, Advocate for the Respondent.

**Coram :- S. C. GUPTE &**
**NUTAN D. SARDESSAI, JJ.**

**Date:- 25th June, 2019**

**ORAL ORDER : (Per S.C. Gupte, J.)**

This Income Tax Appeal challenges an order passed by the Income Tax Appellate Tribunal, Panaji Bench, Panaji. The sole issue involved is whether the amount of ₹76,65,000/- (Rupees seventy six lakhs sixty five thousand only) paid as consultancy fees by the respondent Assessee to M/s. ICICI Ltd. was a capital expenditure and not a revenue expenditure.

2. It is the case of the Assessee that it had paid consultancy fees of ₹76,65,000/- (Rupees seventy six lakhs sixty five thousand only) for financial advisory services for restructuring of its loan, through which the Assessee was able to reduce the interest rate on its loan for the remaining period

of the relevant loan agreement. The Assessee claimed deduction of the expenses as a revenue expenditure. The ITO, in his assessment order, did not accept the Assesee's submission that the expenditure was incurred for restructuring of loan. Based on a reference found in one of the letters addressed by the General Manager of ICICI Ltd. to the Assessee to capital restructuring of the Assessee's group and also to the payment of ₹76,65,000/- (Rupees seventy six lakhs sixty five thousand only) towards advisory services provided by ICICI Ltd., the ITO found that the expenditure was for restructuring of capital. The ITO held that nowhere in the letter it was specified that the payment of fees for advisory services was for loan restructuring of the Assessee. In the absence of any material evidence, the payment of ₹76,65,000/- (Rupees seventy six lakhs sixty five thousand only) was disallowed by the ITO as revenue expenditure.

3. The case of the revenue in the Assessee's appeal before CIT (appeals) was that the fees towards advisory services were in connection with increase in capital base or share capital of the Assessee. The CIT (Appeals), in his order passed in appeal, did not accept the revenue's case. The CIT

(Appeals) held that the Assessing Officer had not mentioned anywhere in the assessment order as to how the advice taken by the Assessee, for which it had made payment to ICICI Ltd., had helped in increasing the capital base or share capital of the Assessee. The CIT (Appeals) held that on the other hand, the Appellant Assessee had given satisfactory explanation as to how the payment had helped in reduction of interest liability from 15.75% to 13% on a loan of ₹25,00,00,000/- (Rupees twenty five crores) with effect from 16/09/2001.

4. When the matter was carried by the Department before the ITAT, the ITAT observed that the departmental representative could not point out any specific error in the order of the CIT (Appeals). The Tribunal held that no material was brought before them to show that the advisory fees had helped the Assessee to increase its capital base. The ITAT considered the judgments of the Supreme Court in the cases of Brooke Bond India Ltd. V/s. Commissioner of Income Tax, West Bengal-III, Calcutta[1] and Punjab State Industrial Development Corporation Ltd. V/s. Commissioner of Income Tax, Patiala[2]. It observed that based on these decisions, no

1 1997(2) Supreme 728
2 Tax Reference Case No.1 of 1990 decided on 04/12/1996

submissions were made during the course of the hearing. The Tribunal, accordingly, held that there was no material brought on record to show that the fees in question were paid either to increase the capital base of the company or towards acquisition of fresh capital.

5. The department's reliance on the decision of the Supreme Court in Brooke Bond India Ltd. (supra) and Punjab State Industrial Development Corporation Ltd. (supra), in support of the present appeal has no merit. In Brooke Bond India Ltd. (supra), the expenditure was incurred as part of an exercise for issue of ordinary shares with a view to increase the Assessee's share capital. The Court relied on its observations in the case of Punjab State Industrial Development Corporation Ltd. (supra). In that case, fees were paid to the Registrar for expansion of capital base of the company. The Court held that it was directly related to capital and though it would help the business of the company as also its profit making, it still retained the character of a capital expenditure, since it was directly related to expansion of the capital base of the company. The Court in Brooke Bond India Ltd. (supra), held that the decision in Punjab State Industrial Development Corporation Ltd. (supra), directly covered the question that fell for consideration of Supreme Court.

6. These observations have no bearing on the facts of the present case. In the present case, the Tribunal has come to a conclusion, as a matter of fact, that the expenditure incurred by the Assessee in payment of fees to ICICI Ltd. had nothing to do with the expansion of the capital base of the company and that the Assessee had clearly made out a case that it was for restructuring of its loan and was by way of a revenue expenditure.

7. Accordingly, no question of law arises in the present appeal for determination of this Court. The appeal is accordingly dismissed.

**NUTAN D. SARDESSAI, J.** **S. C. GUPTE, J.**

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