IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.674 OF 2007

The Commissioner of Income Tax, Mumbai
City - V ... Appellant
versus
M/s. Rishikesh Finlease & Inv. Pvt. Ltd. ... Respondent

Mr. Suresh Kumar, for Appellant.
Mr. Nishit Gandhi with Mr. Vipul Joshi I/by Mr. Sameer G. Dalal, for Respondent.

CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE: 17th JUNE, 2019

P.C.:

1. Record is not clear whether this Appeal was admitted or when admitted. In any case, there is no order admitting the Appeal and framing substantial question of law.

2. Under the circumstances, we have heard learned Counsel for the parties for admission of the Appeal. It is unfortunate that such exercise is being done several years after the Appeal was instituted.

3. This Appeal is filed by the Revenue to challenge the Judgment of the Income Tax Appellate Tribunal ("The Tribunal" for short). The following question is presented for our consideration :

(i) Whether the interest amounting to Rs.3,31,19,323/- incurred on borrowings utilized for getting control over the management of Bhart Pulverising Mill

Ltd., is to be treated as capital expenditure and not the revenue expenditure eligible for deduction u/s 36(1)(iii) of I.T.Act, as claimed by the Assessee ?

4. The Respondent-Assessee had utilized interest bearing borrowed funds for purchasing shares of a subsidiary company and claimed interest as its expenditure under Section 36(1)(iii) of the Income Tax Act, 1961, which the Assessing Officer denied. The Tribunal by the impugned Judgment allowed the claim of the Assessee interalia on the ground that the said expenditure was incurred in the course of its business adventure. Some what similar issue was discussed by this Court in an order dated 11th June, 2019 in Income Tax Appeal No.556 of 2017. The question considered by the Court was as under :

"(b) Whether on the facts and in the circumstances of the case and in law, the ITAT is right in deleting the disallowance of interest on the borrowed funds when the Assessee had not demonstrated whether the purpose for which advance were made is covered by the principle of commercial expediency and also the investment was made for acquiring the controlling interest in the associate concern ?"

5. In relation to this question, the Court observed as under :

> *"6. Quetion No.b arises in following manner :*
> *Assessee had borrowed funds and invested the same for purchase of shares of subsidiary company. On the borrowing, the Assessee had paid interest of Rs.38.22 Crores and claimed it as business expenditure. Assessing Officer was of the opinion that such expenditure shall not*

allowable. The Tribunal by the impugned Judgment held that the expenditure incurred for gaining controlling interest of a subsidiary company is a business expenditure.

We notice that this Court in the case of Commissioner of Income Tax, Panaji Goa V/s. Phil Corpn. Limited, 202 Taxmann 368 (Bombay) held that the Assessee was entitled to deduction of interest on overdraft under Section 36(1)(iii) of the Act when the investment was made by the Assessee in shares of subsidiary of the company to have control over the said Company. Madras High Court in the case of Commissioner of Income Tax, Chennai V/s. Shriram Investments (Firm) Moogambika Complex, Chennai, (1994) 208 ITR 616 (1995) 80 Taxmann 572 (Cal.), has taken similar view. Similar opinion is expressed by Calcutta High Court in CIT V/s. Rajeeva Lochan Kanoria, 233 Taxmann 285 (Delhi). Similar view was also expressed by Delhi High Court in case of Eicher Gooderath Limited V/s. Commissioner of Income Tax, (2007) 156 Taxmann 74 (SC). Under the circumstances, no question arises in this respect."

6. A similar view has been taken by the Division Bench of this Court in the case of *Commissioner of Income Tax – 8 V/s. Srishti Securities (P) Ltd.*[1]

7. Under the circumstances, no question of law arises. The Income Tax Appeal is dismissed.

(S.J.KATHAWALLA, J.) **(AKIL KURESHI, J.)**

1 [2010] 321 ITR 498 (Bombay)