IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.2.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Tax Case Nos.1555 to 1558 of 2008

Commissioner of Income Tax
Chennai ... Appellant in all the cases / Appellant

Vs.

M/s.Deekay Exports Ltd.,
No.7, 8 Parkland Apartments
E-1 Nathan Street, Harrington Road,
Chetput, Chennai 600 031. ... Respondent in all the cases / Respondent

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, dated 4.1.2008 made in ITA Nos.1912/Mds/2006, 1913/Mds/2006, 115/Mds/2007 and 116/Mds/2007, respectively against the Order of the Commissioner of Income Tax (Appeals)-VIII, Chennai dated 17/05/2006 and 31/10/2006 and 19/10/2006 in ITA Tr Nos.181 & 182/2004-05, ITA No.620/2005-06/A-III, ITA No.619/2005-06/A-III respectively for the assessment year 1999-2000 & 2000-2001 and 2002-2003 against the Order of the Deputy Commissioner of Income Tax, Company Circle I(4),(i/c), Chennai, dated 26/03/2003 & 27/04/2005, 29/10/2004 in GI No/PA No.DX4-052/AAACD2750K and GI No.DX3--03 and AAACD2750C/DX3-023 for the assessment year 1999-2000 & 2000-2001 and 2002-2003.

For Appellant : Mr.T.Ravikumar
Senior Standing Counsel

For Respondent : Mr.S.Sridhar

COMMON JUDGMENT

(Delivered by DR.VINEET KOTHARI,J)

These Appeals have been filed by the Revenue under Section 260-A of the Income Tax Act by raising the following purported substantial questions of law arising from the order passed by the Income Tax Appellate Tribunal on 4.1.2008 dismissing the Revenue's Appeal for the Assessment Year 1999-2000, 2000-2001 and 2002-2003:-

> "T.C.A.Nos.1555 to 1557/2008:
> i) Whether, on the facts and circumstances of the case, the Tribunal was right in holding that the interest and finance charges incurred on availing the loan which was diverted to other companies are allowable as business expenditure?
> ii) Where no income was reported out of such diverted loan amounts, is the expenditure on interest and the finance charges allowable as a deduction under Section 14A of the Income Tax Act?"
> "T.C.A.No.1558/2008:
> i) Whether, on the facts and circumstances of the case, the Tribunal was right in holding that penalty under Section 271(1)(c) is not leviable on the assessee?"

2. The learned Tribunal, by the impugned order, not only set aside the disallowance under Section 14A of the Act in the hands of the Assessee but also set aside the consequential penalty under Section 271(1)(c) of the Act.

3. The findings of the learned Tribunal in the said order with regard to disallowance under Section 14A of the Act and penalty which were set aside by the first Appellate Authority are quoted below for ready reference:-

> "4.1. The appellant also submitted that there is no case for levy of penalty, in view of the very nature of the issue being debatable as to whether or not interest expenses are allowable or not. Further, it was pointed that the additions in the assessment emanated from the findings and similar additions made in A.Ys.1999-00 and 2000-01, which had been deleted in first appeal. It was also submitted that the appellant is prosecuting this appeal after the order appealed against has been correctly served on them on 21.2.2006 in support of which the appellant drew reference to the correspondences with the Assessing Officer and the direction of the learned CIT-1, Chennai, placed in the paper book fled in the quantum appeal. It was also pleaded that on the facts and circumstances and nature of addition, there is no case for levy of penalty

under Section 271(1)(c).

5. I have perused the facts pertaining to the issues in this case and considered all the relevant materials. I have, by my order in ITA.No.619/2005-06/A.III dated 19.10.2006 deleted the entire addition made in the assessment and therefore, the impugned penalty arising from the said addition also stands deleted. I, therefore, direct the Assessing Officer to delete the penalty of Rs.1,63,72,145/- levied under Section 271(1)(c)."

4. Having heard the learned counsel for the parties, we are satisfied that actually no substantial question of law arises and the finding of fact recorded by the Tribunal with regard to deposits made by the Assessee Company with another Company viz., M/s.DSQ Holdings Limited was held to be a genuine Inter-Corporate deposits made, as the Assessee Company owed a sum of Rs.11,33,70,164/- to the said Company and therefore, the Assessee Company did not charge any interest on the sums advanced by it to the said Company for purchase of Shares. No exempted income in the form of Dividend was earned by the Assessee Company during the year in question.

5. The findings of facts recorded by the Tribunal as well as the first Appellate Authority are correct findings of facts and do not give rise to any perversity in the matter. The said findings of facts are, therefore, binding on High Court under Section 260A of the Income Tax Act.

6. The penalty under Section 271(1)(c) of the Act was imposed as a consequential of the said addition by the Assessing Authority which has been rightly set aside by both the Appellate Authorities.

7. Accordingly, we do not find any merit in the present Appeals filed by the Revenue and the same are liable to be dismissed. Accordingly, the Appeals filed by the Revenue are dismissed and the questions framed above are answered against the Revenue and in favour of the Assessee. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssk.

To

1. The Commissioner of Income Tax
   Chennai

2. The Income Tax Appellate Tribunal,
   Madras 'A' Bench, Chennai

3. The Income Tax Officer (OSD),
   Company Circle-I(4), Chennai.

4. The Commissioner of Income Tax (Appeals)-VIII,
   Chennai.

5. The Deputy Commissioner of Income Tax,
   Company Circle I(4)(i/c),
   Chennai.

+1 cc to Mr.S.Sridhar, Advocate, S.R.No.18543

+1 cc to Mr.T.Ravikumar, Advocate, S.R.No.18631

SSD(CO)
SSM(10/05/2019).