

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Tax Case Appeal No.113 of 2009

Commissioner of Income Tax
Chennai III ... Appellant

Vs.

M/s.KEC International Ltd (formerly
RPG Transmissions Ltd), DLF Infinity
Towers, 7th Floor, Tower 'B'
DLF City, Phase II, Gurgaon 122 002. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai 'A' Bench, Chennai, dated 27.06.2008 made in ITA No.2425/Mds/2007, against the order passed by the Commissioner of Income Tax (Appeals)-V, Chennai, dated 16.08.2007 made in ITA.No.724/2006-07, for the Assessment Year 2004 -05, against the Order passed by the Income Tax Officer (OSD), Company Circle-V(4), Chennai, dated 28.12.2006 U/s.143(3) of the Income Tax Act, 1961.

For Appellant : Mr.T.Ravikumar,
Senior Standing Counsel
For Respondent : Mr.V.S.Jayakumar

J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI,J)

The Revenue has filed the present appeal under Section 260A of the Income Tax Act, against the order of the Income Tax Appellate Tribunal, 'A' Bench, Chennai dated 27.06.2008 for the Assessment Year 2004-05. The present appeal was admitted by the Coordinate Bench of this Court on 18.03.2009 on the following substantial questions of law:

"(i) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the reopening of the assessment was illegal?

(ii) Whether in the facts and circumstances of the case, the Tribunal was right in holding that the license fee paid by the assessee to RPGE, Bombay for the A.Y.96-97, 98-99 and 99-00 are nothing but expenditure incurred wholly and exclusively for the purpose of business?

(iii) Whether, in the facts and circumstances of the case, the Tribunal was right in allowing the claim of interest on borrowed funds utilised for investment in shares of CESC, as a business expenditure on the ground that investment is one of the objectives of the assessee company?"

1. Learned counsel for the respondent/assessee Mr. Jayakumar submitted that, the controversy is no longer res integra and has been decided by the Coordinate Bench of this Court in the case of assessee itself in "Commissioner of Income Tax (Vs) R.P.G. Transmissions Limited (later on name changed to M/s. KEC International Ltd) reported in (2013) 359 ITR 0673 (Mad).

2.

3. The relevant portion of the judgment of the Coordinate Bench of this Court is quoted below for ready reference.

"41. It is an admitted fact that substantial expenditure on payment of interest was incurred only on account of borrowings which appears to have been invested in shares, savings certificates, fixed deposits etc. In fact, Section 57 lays down the permissible deductions and Section 57(iii) lays down that the expenditure so expended should be wholly and exclusively for the purpose of making or earning such income. It is no doubt true that one of the purposes of the assessee's business was also to invest in the shares of other companies.

42. The Tribunal, in consideration of appeal of the assessee in paragraph 35 of the order dated January 23, 2006 has dealt with this issue at length. The Tribunal has found that there is proximate nexus between the business of the assessee-company and that of the company in which investments were made in the form of shares. It may be true that the returns are not commensurate with the expected returns in the form of interest, but if and when, the shares are liquidated,

there is expectancy of substantial gains which fact has been glossed over by the Assessing Officer while confining his findings that the returns are far below the quantum of interest paid on the borrowed funds and, therefore, the basis of analysing that the payment of interest on borrowed funds has to be tested on the ground of quantum of return is untenable. Furthermore, as rightly pointed out by the learned Senior Counsel for the assessee, Section 36(1)(iii) of the Act does not contemplate any test that the amounts so invested should be "wholly and exclusively for making or earning such income". On a plain reading of Section 36(1)(III), we do not find any such requirement mandated in the Section to confine such expense. Furthermore, the Section also does not place any embargo for investments to be made in group concerns and subsidiary concerns. Therefore, we are not in agreement with the findings of the Commissioner of Income Tax (Appeals) and concur with the findings of the Tribunal in this regard.

43. In our judgment in the tax case appeal in T.C.(A) No.1980 of 2008 (since reported in CIT Vs.Spencers and Co. Ltd., (No.3 [2013] 359 ITR 644 (Mad) which was heard along with these appeals and disposed of today, we have elaborately discussed the issue relating to payment of interest on borrowed capital and the reasons given by us in the said judgment for sustaining the order of the Tribunal are also applicable to the present appeals.

44. We have carefully scrutinised the reasons given by the appellate authority and the Tribunal for allowing the assessee's claim of interest paid on borrowed capital. The appellate authority and the Tribunal found that the investment made in shares by the assessee by utilising borrowed capital was for strategic business purposes because the companies were promoted as special purpose companies to strengthen and promote its existing business by combining different business segments and, therefore, the claim was fully allowable under Section 36(1)(iii). We also found that the Revenue did not adduce any material to show that the borrowed capital was utilised by the assessee for non-business purposes. The appellate authority, in our considered view, was correct in allowing the claim of the assessee and deleting the disallowance made by the assessing authority. We also find that the Tribunal in correct appreciation of the matter had in turn confirmed the finding of the appellate authority. We

see no reason to interfere with the order passed by the Tribunal.

45. We, thus answer these substantial questions of law in favour of the assessee."

4. Learned counsel for the assessee also pointed out that, in the present assessment order dated 28.12.2006 for the Assessment Year 2004-05 also, the assessing authority has wrongly discussed the facts relating to the Assessment Year 1998-99 and on that basis, even though there was no fresh investment for the assessment year 2004-05, he has made additions under Section 36(1) (iii) of the Act.

5. Learned Senior Standing Counsel for the revenue Mr.T.Ravi Kumar, however sought to distinguish the said facts, while not disputing the fact of no investments made in the present case for the assessment year 2004-05 in question.

6. Having heard the learned counsel for both parties, we of the clear opinion that, since the very investments were made in the preceding assessment years viz., 1997-98 to 2001-02, and the same has been the subject matter of the appeal filed by the Revenue before this Court, which has been decided against the appellant Revenue by the aforesaid judgment and there was no fresh investment in the present assessment year 2004-05 in the present case, the controversy is no longer res integra and is squarely covered by the judgment of the Coordinate Bench of this Court.

7. Accordingly, we find no merit in this appeal filed by the Revenue and the appeal is dismissed. No costs. The substantial questions of law are answered against the Revenue and in favour of the assessee in the same terms.

Sd/-

सत्यमेव जयते Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

KST

To

1.The Income Tax Appellate
Tribunal 'A' Bench, Chennai.

2.The Commissioner of Income Tax Appeal-V,
Chennai.

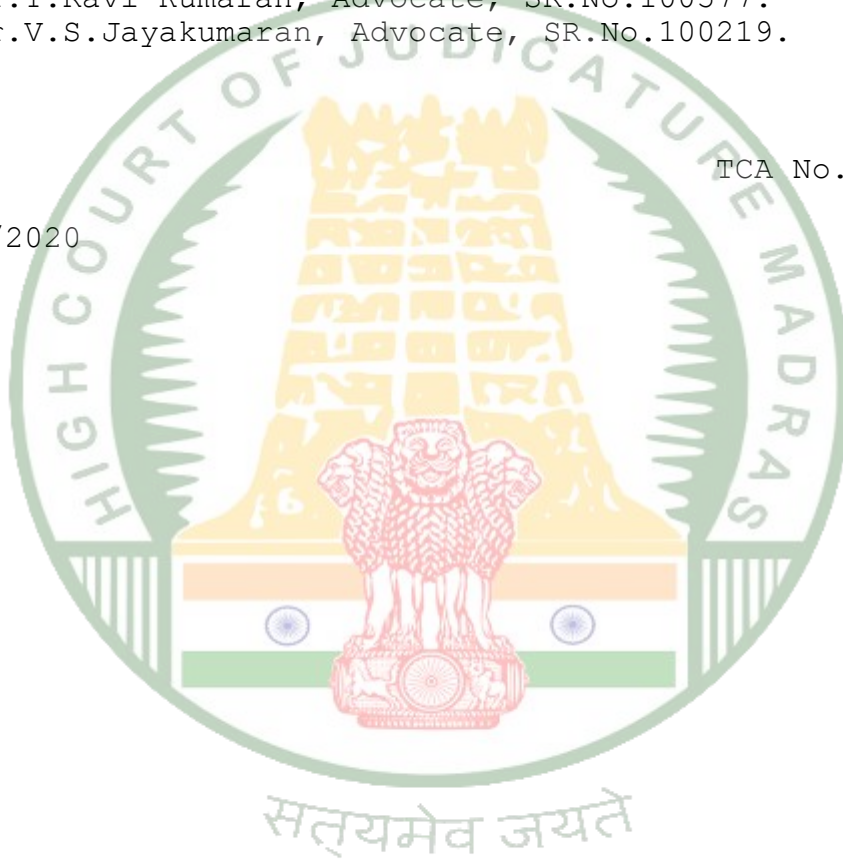
3.The Income Tax Officer (OSD),
Company Circle-V(4), Chennai.

+1cc to Mr.T.Ravi Kumaran, Advocate, SR.No.100577.

+1cc to Mr.V.S.Jayakumaran, Advocate, SR.No.100219.

GP (CO)
CSR:10/01/2020

TCA No.113 OF 2009



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