IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.12.2019

CORAM

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

Tax Case (Appeal) No.2025 of 2008

Commissioner of Income Tax
Chennai - III. ... Appellant

Vs.

M/s.Seven Seas Distillery (Pvt.) Ltd.,
1 Ramakrishna Street,
T.Nagar, Chennai 600 017. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai 'C' Bench, dated 13.06.2008 made in ITA No.2132/Mds/2007 for the assessment year 2000-01.

For Appellant : M/s.J.Narayanasamy
Senior Standing Counsel

For Respondent : Mr.M.P.Senthil Kumar
For Mr.N.Muthukumar

J U D G M E N T

(Delivered by DR.VINEET KOTHARI,J)

The Revenue has filed this Tax Case (Appeal) under Section 260A of the Income Tax Act, 1961, (in short 'Act') by raising substantial questions of law arising from the order passed by the Income Tax Appellate Tribunal on 13.06.2008 in ITA No.2132/Mds/ 2007 for the Assessment Year 2000-01.

2.The learned Tribunal dismissed the appeal of the Revenue by holding that Section 40(a) of the Act was not attracted, because the respondent/assessee had obtained, a specific exemption from the concerned Department of Economic Affairs, Ministry of Finance, Government of India, vide Letter No.F.No.4(32)/97-ECB dated 23.09.1997 with respect of the foreign currency loan taken by the respondent/ assessee from M/s.London Forfaiting Asia Ltd., in which, it was clearly stipulated that the assessee need not withhold tax or deduct any tax at source on the payment of interest on such Foreign Currency loan taken by it from M/s.London Forfaiting Asia Ltd. and therefore, the said interest payment could not be added back to the declared income of Assessee under Section 40(a) of the Act.

3.The observation of the learned Tribunal, in its order dated 13.06.2008, is quoted below for ready reference:

> *"6.We have considered the rival submissions carefully in the light of the material on record. We find that as per Sec.40(a) of the I.T. Act, an addition can be made on account of payment made to a party residing outside India towards interest etc., if tax has not been deducted. However, in a case where the Govt. of India itself has exempted a particular Assessee from with holding tax, then in our considered view, no such tax is deductible. In the case before us, The Department of Economic Affairs, Ministry of Finance, Govt. of India, **vide their letter No.F.No.4(32)/97-ECB dated 23.9.1997, had specifically exempted the Assessee from with holding tax on the payment of interest** and administrative charges against the loan payment from London Forfaiting Asia Ltd. This means that the Assessee was not required to deduct any tax under sec.195 and, therefore, the provisions of sec.40(a) cannot be attracted. We are unable to agree with the findings of the Assessing Officer which were reiterated before us by the Id. Departmental Representative, that loan proceeds were used for repayment of loan from Raghava Enterprises P. Ltd., because the Assessee had explained this by showing that initially the Assessee had borrowed loan for working capital requirement from Raghava Enterprises P. Ltd., and once foreign currency loan was available then the loan from Raghava Enterprises P. Ltd. was repaid. In any case, once exemption is granted by the Ministry of Finance, Govt. of India, then in our considered view, the Assessing Officer has no jurisdiction to record further findings that the purpose of loan is different than it was approved for by the Govt. of India. In these circumstances, we find nothing wrong with the order of the CIT (Appeals) on this issue and accordingly confirm the same."*

4.The present appeal was admitted by the Coordinate Bench of this Court on 04.12.2008 on the following substantial questions of law:

> *"1.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the interest payment of Rs.73,91,128/- made by the assessee on the foreign currency loan taken from M/s London Forfaiting Asia Ltd was allowable as a deduction even though no tax had been deducted at source as required u/s 195 of I.T. Act?*
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> *2.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that merely because the assessee had obtained formal exemption u/s 10(15)(iv)(f) from the Reserve Bank of India and the Department of Economic Affairs, on a representation made by the assessee that the foreign currency loan sought for, was for the purpose of meeting working capital requirements, the Assessing Officer was barred from enquiring into the fact as to whether the foreign currency loan was actually utilized for the purpose of meeting working capital requirements?*
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> *3.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that repayment of a domestic loan taken earlier by making use of the foreign currency loan would amount to meeting the working capital requirements of the assessee company overlooking the fact that such utilization has not in any way augmented the working capital of the company and for that reason there was breach by the assessee of the conditions under which exemption u/s 10(15)(iv)(f) was granted?"*

5.Learned counsel for the Revenue submitted that the provisions of Section 10(15)(f) of the Act provides that such interest payment on the foreign currency loans will be exempted, only if the loan is employed for industrial development in India. But, since in the present case, the loan taken by the assessee from London Forfaiting Asia Ltd. in foreign currency was utilised by it for repayment of another loan from one M/s.Raghava Enterprises P. Limited and the same loan was not directly employed for the industrial development by the Assessee, therefore, the recipients of the said interest viz., M/s.London Forfaiting Asia Ltd. cannot claim any exemption on such interest payment under Section 10(15)(f) of the Act and consequently, the assessee was liable to deduct tax at source and in the absence of the same, the interest payment was liable to be added back to its declared income under Section 40(a) of the Act.

6.Per contra, learned counsel for the assessee submitted that in view of the specific exemption in favour of the assessee, the learned Tribunal has rightly held in favour of the assessee that such interest payment cannot be disallowed and in the absence of any tax deduction at source under Section 40(a) of the Act.

7.We have heard the learned Counsels for the parties. The exemption given by the Ministry of Finance in favour of the assessee vide Letter dated 23.09.1997 is quoted below for ready reference:

"F.No. 4(32)/97-ECB Dated : 23-09-1997
M/s.Seven Seas Distillery Ltd.,
76, Kamdar Nagar,
III Street,
Madras - 600 034.

SUB: Proposal for exemption from withholding tax on the payment of interest and administrative fee, under Section 10(15)(iv)(f) of the Indian Income Tax Act, 1961.

Dear Sirs,

With reference to your letter no.PDL/ECB/A:181, dated 28-08-1997 on the subject cited above, I am directed **to convey the approval** of the Government of India, Ministry of Finance, Department of Economic Affairs **for exemption from withholding tax** on the payment of interest and administrative fee, under Section 10(15)(iv)(f) of the Indian Income Tax Act, 1961, as approved by RBI:-

a)	RBI's letter No.and Date: Loan Key No.:	EC.IMD (II)/756/03/02/739(A)/ 97-98, dated 18.08.1997. RBI/3M/97-0295.
b)	Name of the Lender :	M/s.London Forfaiting Asia Ltd., Cyprus.
c)	Amount :	USD 3 Million
d)	Interest :	1.45% p.a. oyer six month LIBOR
e)	Administrative fees:	0.50% flat.
f)	Period of Loan :	3 years.

Yours faithfully,

(B.K.Sinha)
Deputy Director (ECB)"

8.The provision of Section 10(15)(i) and (f) is quoted herein below for ready reference:

> *"10.**Incomes not included in total income***
>
> *(15)[(i) **income by way of interest**, premium on redemption or other payment on such securities, bonds annuity certificates, savings certificates, other certificates issued by the Central Government and deposits as the Central Government may, by notification in the Official Gazette, specify in this behalf, subject to such conditions and limits as may be specified in the said notification;]*
>
> *[(f) by an industrial undertaking in India on any moneys borrowed by it in foreign currency from sources outside India under a loan agreement approved by the Central Government [before the 1st day of June, 2001] **having regard to the need for industrial development in India,** to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan and its repayment;"*

9.In the present case, the assessee had the specific exemption from the Ministry of Finance and therefore, was entitled not to deduct any tax at source from the interest payment made by it to M/s.London Forfaiting Asia Ltd., from which assessee took the Foreign Currency Loan in question and therefore, Section 40(a) of the Act could not attract to the present case at all. We are further of the view that even though the foreign currency loan in question was utilised by the assessee to repay the loan of one M/s.Raghava Enterprises P. Limited, which was admittedly taken from M/s.Raghava Enterprises Limited towards its working capital requirement, the purpose of Section 10(15)(f) of the Act, for the industrial development stood satisfied in the present case.

10.The words in the said provision quoted above are not "for industrial development", but the words "having regard to the need for industrial development in India", which are wider in nature. These words employed in Section 10(15)(f) of the Act are wide enough to cover within its ambit and scope even the indirect utilisation of the funds for industrial development in India. Therefore, even if the loan taken as working capital loan from M/s.Raghava Enterprises Limited earlier and employed by the assessee for such industrial development and the foreign currency loan in question was utilised to repay the loan to M/s.Raghava Enterprises Private Limited, the exemption given by the Ministry of Finance in favour of the Assessee cannot be said to have been lost by such facts. It is not the case of the Revenue before us, that the exemption given to the assessee vide Letter dated **23.09.1997** stood revoked or withdrawn on any such contingency at any point of time.

11.Therefore, viewed from any angle, the assessee was entitled to exemption and was under no obligation to deduct any tax at source on such interest payment made on Foreign Currency Loan to M/s.London Forfaiting Asia Ltd., Therefore, the additions with reference to Section 40(a) of the Act made in the name of the Assessee, were rightly deleted by the two appellate authorities in the present case.

12.We do not find any merit in the present appeal of the Revenue and therefore, we dismiss the same and answering the questions admitted above in favour of the Assessee and against the Revenue. No order as to costs.

(V.K.,J.) (R.S.K.,J.)
03.12.2019

Index : Yes

Speaking Order : Yes

Sgl

To

The Income Tax Appellate Tribunal,
Chennai 'C' Bench, Chennai

DR.VINEET KOTHARI, J.
and
R.SURESH KUMAR, J.

Sgl

T.C.(A) No.2025 of 2008

03.12.2019.