

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal No. 253 of 2009

Smt. R. Santha

... Appellant

Vs

Commissioner of Income Tax -VII,
121, Uthamar Gandhi Salai,
Chennai - 600 034.

... Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of Income Tax Appellate Tribunal Chennai 'B' Bench, dated 16.04.2008 in ITA No.1499/Mds/2005 for the Assessment year 2001-02 and against the O/o Commissioner of Income Tax (Appeals)IX, Chennai-34 and made in TT/Appeal No.384/2004-05 order dated 08/04/2005 and against the Income Tax Department Ward VII (1), Chennai-34 and made in PAN/GIR No.AANPS9380A/566720-S dated 31/03/2004.

For Appellant : Mr.N. Devanathan

For Respondent : Mr.S.Rajesh, SC

JUDGMENT

[Judgment was made by T.S.SIVAGNANAM, J]

This appeal by the assessee filed under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") is directed against the order dated 16.04.2008 passed by Income Tax Appellate Tribunal Chennai 'B' Bench (hereinafter referred to as 'Tribunal') in ITA No.1499/Mds/2005 for the Assessment Year 2001-02.

2. This Tax Case Appeal was admitted on 06.07.2009 on the following substantial questions of law:

"1. Whether in the facts and circumstance of the case, the Tribunal was right in holding that the appellant is not entitled for deduction of interest having regard to the principles of commercial expediency? and

2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the appellant is not entitled for deduction of interest having regard to application of principles of attribution when there exists mixed funds?"

3. We have heard Mr.N.Devanathan, learned counsel for the appellant/assessee and Mr.S.Rajesh, learned Standing Counsel for the respondent/Revenue.

4. The short issue, which falls for consideration in the instant case is, as to whether the assessee is not entitled for deduction of interest on the ground that she had lent money from borrowed funds as part of commercial expediency to promote her business.

5. While completing the assessment under Section 143(3) of the Act vide order dated 31.03.2004 upon examining the books of accounts of the assessee, Assessing Officer noticed that the name of Mr.S.K.Rajamanickam, assessee's husband appeared in the assessee's ledger account and the payments were shown as outgoings. The assessee stated that these payments were made to her husband in connection with expenditure incurred towards the head, manufacturing expenses. The husband of the assessee was engaged in the business of manufacture of dhall and he has established a dhall mill with machineries. The assessee, while transferring the loans to her husband, did not charge interest, but she had paid interest to the borrowers namely the bankers and other creditors from whom she had borrowed funds. This according to the Assessing Officer was diversion of funds to the assessee's husband and a sum of Rs.1,34,842/- was disallowed by the Assessing Officer.

6. The assessee preferred an appeal before the Commissioner of Income Tax Appeals-IX, Chennai [hereinafter referred to as 'the CIT(A)']. CIT(A), while affirming the order passed by the Assessing Officer, stated that there is no dearth of dhall mills and dhall is not such a technical product, which would require some specialized technical skills. With regard to the plea

raised by the assessee that her husband has given his property as a collateral security to the assessee for availing cash credit facility from the bank, the CIT(A) has stated that the collateral security given by her husband is of much lesser value than the money advanced by the assessee to her husband.

7. Aggrieved by the order dated 08.04.2005 passed by the CIT(A), the assessee preferred an appeal before the Tribunal contending that assessee by using all the manufacturing facilities established by her husband, derived commercial advantage in the shape of timely delivery of processed dhall, high quality processing and discount on processing charges as compared to market prize and that the assessee's husband offered his own property valued more than Rs.50 lakhs as collateral security for the purpose of cash credit facility. Further, the assessee contended that the bank loans are utilized entirely for the business of the assessee and they are secured by hypothecation of stock and there is no diversion and that the assessee had interest free funds, which ought to have been considered by the CIT(A) and the observations of CIT(A) that processing of dhall does not require technical expertise is palpably an incorrect finding. Further, it was contended that no disallowance could be made, when the advance was given by the assessee to her husband, purely on account of commercial expediency, taking note of the business relationship and property security offered by her husband for the cash credit facility availed by the assessee.

8. Though the above ground was raised by the assessee, the Tribunal confirmed the order passed by the CIT(A) stating that the role played by the assessee was only that of a miller and job of a miller does not call for huge amount of working capital deployment as understood in ordinary commercial parlance. At the outset, we wish to point out that the observations made by the CIT(A) was confirmed by the Tribunal with regard to nature of the business of the assessee's husband namely manufacture of dhall is the personal opinion of the CIT(A) and that of the Tribunal and there was no material placed either before the CIT (A) or before the Tribunal to belittle the processing of dhall.

9. We do not find any material, which was referred by the CIT(A), to come to a conclusion that manufacturing of dhall does not require heavy work and technical skill. Unfortunately, the CIT(A) and the Tribunal lost sight of the legal submission made by the assessee. In the case of CIT Vs. Kandagiri Spinning Mills Ltd. [reported in (2008) 298 ITR 306], a Division Bench of this Court held that amounts given by the assessee to its sister concern from the profits earned by it during the relevant assessment years and not by diverting the funds borrowed from the financial institutions and banks, interest paid on borrowed

capital cannot be disallowed more so as the amounts were advanced by the assessee as a measure of commercial expediency in as much as the employees of the assessee company and their family members are being given concessional treatment at the hospital.

10. In S.A. Builders Ltd. Vs. CIT [reported in (2007) 288 ITR 1], Hon'ble Supreme Court has held that interest on borrowed funds cannot be disallowed if the assessee has advanced interest-free loan to her sister concern as a measure of commercial expediency; what is to be seen is "business purpose" and what the sister concern did with the money advanced.

11. There can be no allegation against the assessee of diversion of funds, considering the relationship between the assessee and her husband, who had established the dhall mill and that the assessee is at an advantage in obtaining finished product from her husband's dhall mill and she will be assured of time delivery of the processed dhall and assured of quality processing and obviously at discounted rates. Furthermore, there is no endeavour made by the Tribunal to examine the specific stand of the assessee that the assessee had interest free funds.

12. Thus, we find that CIT(A) decided the case against the assessee based on its own personal opinion without any material available on record. Therefore, we hold that the finding rendered by the CIT(A) is perverse. This perverse finding affirmed by the Tribunal was without any material placed before it to come to a conclusion that the role played by the assessee's husband as a miller is virtually insignificant. Decisions have to be taken based on the return of income filed by the assessee and the documents that may be called for by the Assessing Officer. There is no room for the authority to incorporate their personal opinion while completing the assessment, which precisely was done by the CIT(A) and therefore, has to necessarily be held to be perverse and unsustainable. In fact, the assessee's husband stood as a guarantor to the assessee for obtaining cash credit facility was not disbelieved. The CIT(A) rejects it by stating that the value of the property was not equal to that of the amount borrowed. This is not the concern of the CIT(A), it is for the bank, which extended the loan to be worried about the adequacy of the security offered by the borrower. In any event, the assessee's husband stood as a guarantor for the loan transaction making him jointly and severally liable along with the assessee.

13. Thus for all the above reasons, we have no hesitation to hold that the findings rendered by the two authorities and the Tribunal are perverse and call for interference.

14. For the above reasons, the appeal filed by the assessee is allowed and the substantial questions of law are answered in favour of the assessee. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

mp

To

1. The Income Tax-Appellate Tribunal, Bench 'B', Chennai
2. The Commissioner of Income Tax (Appeal) -IX, Chennai-34
3. The Income Tax Department,
Ward VII (1), Chennai-34.

+1cc to Mr.N. Devanathan, Advocate SR.No.68789

+2cc to Mr.S.Rajesh, Advocate SR.No.68535

Tax Case Appeal No. 253 of 2009

RR (CO)
GMY (26/09/2019)

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