IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

T.C.A.No.521 of 2018

M/s.Chennai Petroleum Corporation Limited
536, Anna Salai, Teynampet,
Chennai - 600 018
PAN:AAACM4392C ..Appellant

Versus

The Assistant Commissioner of Income Tax,
Company Circle - I(3),
Chennai - 600 034. ..Respondent

Prayer:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, dated 05.12.2017 made in I.T.A.No.1858/Mds/2011 relating to the Assessment Year 2004-05.

For Appellant : Mr.R.Vijayaraghavan
for Mrs.Subburaya Aiyar Padmanabhan

For Respondent: Mr.T.Ravikumar
Senior Standing counsel
and
M/s.R.Hemalatha
Senior Standing counsel

JUDGMENT
[Order of the Court was made by T.S.SIVAGNANAM, J.]

This appeal has been filed by the assessee under Section 260 A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order dated 05.12.2017 passed by the Income Tax Appellate Tribunal, Madras, 'B' Bench ('the Tribunal' for brevity) in I.T.A.No.1858/Mds/2011 for the Assessment Year 2004-05. The appeal was admitted on 23.08.2018 on the following Substantial Questions of Law for consideration:

> "(i) Whether the Tribunal was right in law in holding that the expenditure incurred during the year towards prepayment charges for substituting high cost

debt for low cost debt is in the nature of interest as defined under Section 2(28A) of the Act and hence not allowable as deduction under Section 37 of the Act? And

(ii)Whether the Tribunal was right in law in holding that the prepayment charges is in the nature of interest incurred during the construction period would form part of the capital asset to be capitalised as per proviso to Section 36(1)(ii) of the Act, without appreciating that the expenditure in question was not incurred in raising a debt but incurred for extinguishment/liquidation of borrowings?"

2. We have heard Mr.R.Vijayaraghavan, learned counsel for the appellant / assessee and Mr.T.Ravikumar, learned Senior Standing counsel and M/s.R.Hemalatha, learned Senior Standing counsel appearing for the respondent / Revenue.

3. The assessee is in the business of Crude Oil Refining and Manufacturing of Petroleum Products. For the Assessment Year under consideration AY - 2004-05, the assessee filed his Return of Income on 27.10.2004, disclosing a total income of Rs.200,29,74,320/-. The return was initially processed under Section 143(1) of the Act, accepting the return of income. Subsequently, the case was selected for scrutiny and notice under Section 143(2) of the Act was issued and based on the details furnished by the assessee, the assessment was completed on 26.12.2006, determining the total income at Rs.214,95,33,360/-.

4. In these appeals, we are concerned about the onerous in respect of the Reset Fee paid to the Oil Industry Development Board('OIDB' for brevity). The assessee started the expansion of its refining capacity which was financed by various loans from the OIDB. During the Financial year relevant to the Assessment Year 2004-05, the assessee decided to swap high interest bearing loan obtained from OIDB with a low interest bearing loan and this was accepted by the OIDB by liquidating the existing high cost loan and granted a fresh loan at a lower rate and to liquidate the old loan, it charged a fee of 2% on the loan outstanding as Reset Fee amounting to Rs.13.48 crores and it was paid during the Financial Year relevant to the Assessment Year 2004-05. After the completion of the expansion of the project, in the Financial Year relevant to the Assessment Year 2004-05, the project was commissioned and the assets were capitalized. The assessee contended that this extent should not be capitalized and should be treated as a Revenue expenditure. The Assessing Officer did not agree with the said stand, referred to the proviso in Section 36(1)(iii) of the Act and capitalized the amount and due depreciation was allowed. The assessee carried

the matter by way of an appeal before the Commissioner of Income Tax(Appeals) (Large tax payers Unit) ['CIT(A)' for brevity], Chennai. By order dated 14.09.2011, the appeal was dismissed, holding that there is no dispute that the amount has been paid by the assessee only for the monies borrowed by it and hence, the same would come under the ambit of interest. The assessee being aggrieved by such order, preferred an appeal before the Tribunal. The assessee filed appeal, which has been dismissed by the Tribunal.

5. The assessee placed reliance on the decision of the High Court of Delhi in the case of CIT Vs. Gujarat Guardian Ltd., [2009] 177 Taxman 434 (Del), wherein it was held that the prepayment charges as only interest and being payable to financial institution, to which therefore the provision of Section 43B(d) shall apply and it is deductible for the year of payment. The Tribunal, in our view, rightly held that the said decision instead of assisting the assessee's case, would assist the case of the Revenue. The Tribunal held that the Reset Fee is only in the nature of interest defined under Section 2(28A) of the Act to include any service fee or charge in respect of monies borrowed or debt incurred. Further, the Tribunal also took note of the provision of Section 36(1)(iii) of the Act as noted by the Assessing Officer and held that the same would stand to be a part of the core cost of the capital asset towards acquiring which the borrowing stands applied, the interest being incurred during the construction period. Furthermore, the Tribunal had applied the decision of the Hon'ble Supreme Court in the case of Deputy Commissioner of Income Tax Vs. Core Health Care Limited, [2008] 298 ITR 194(SC). We find that the reasons assigned by the Tribunal are perfectly valid on facts. The Assessing Officer, CIT(A) as well as the Tribunal considered the nature of transaction and rejected the plea of the assessee that Reset Fee should be treated as a Revenue expenditure. Thus, We find no grounds to interfere with the orders passed by the Tribunal.

6. In the result, the Tax Case Appeal is dismissed and the Substantial Questions of Law are answered against the assessee. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1.The Income Tax Appellate Tribunal,
'B' Bench, Chennai.

2.The Commissioner of Income Tax,
Large Tax Payer Unit II Floor,
1775, Jawaharlal Nehru Inner ring Road,
Anna Nagar, Western Extension, Chennai-101.

3.The Assistant Commissioner of Income Tax,
Company circle I(3), Chennai-34.

+1cc to Mr.T.Ravikumar, Advocate, S.R.No.34007
+1cc to Mr.Subburaya Aiyar Padmanabhan, Advocate, S.R.No.33995

EV(CO)
RV(30/11/2020)