IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition No.19523 of 2018
and
WMP. Nos.22962 to 22964 of 2018

M/s.Spaarkon Trading Chennai P. Ltd.,
PAN No.AANCS6476N
Rep. by its Director, Mr.Srinivas Ramachandran,
Plot No.5, Door No.130, 1st Cross,
4th Street, Surendra Nagar,
Adambakkam, Chennai - 600 088. ...Petitioner

Vs.

1. The Commissioner of Income Tax (Appeals)-15,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

2. The Assistant Commissioner of Income Tax,
Non Corporate Circle 18(1), 5th floor,
Room No.520, Wanaparthy Block,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

... Respondents

PRAYER: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in ITA No.132/2016-17/CIT (A)-15 dated 28.03.2018 and quash the same consequently, direct the 1st respondent to afford an opportunity to the petitioner for submitting the relevant documents to substantiate their version that the alleged addition to income was business expenditure etc.,

For Petitioner : Mr.V.Sridharan, Senior Counsel
for Mr.S.Ashok Kumar

For Respondents : Mr.A.P. Srivnivas,
Senior Standing Counsel

ORDER

The petitioner challenges an order of the Commissioner of Income Tax (Appeals) [in short CIT (A)] dated 28.03.2018 for Assessment Year 2013-14, passed in terms of the provisions of Section 250 (6) of the Income Tax Act, 1961 (in short 'Act').

2. The appellate order in challenge has made an enhancement to the income determined by the Assessing Officer.

3. The order of assessment dated 30.03.2016 had effected a disallowance under Section 14A read with Rule 8D of the Income Tax Rules, 1962. In course of effecting the disallowance, the Assessing Officer notes that the petitioner has effected borrowals from Standard Chartered Bank towards 'Everonn Harayana Project'. A diallowance under Section 14 A had been made on the ground that interest free loans has been granted in excess of the borrowals. This was contested by the petitioner in first appeal before the CIT (A) who, noticing that the petitioner had not earned any exempt income in the course of the year, held that the provisions of Section 14A would not be applicable. The disallowance under Section 14A was thus deleted.

4. While doing so, the CIT (A) noted that the borrowals of Rs.32 Crores from Standard Chartered Bank had resulted in payment of interest of Rs.2.87 Crores thereupon. However, the borrowals had themselves been given as interest-free loans to Everonn Education Ltd, (Everonn Education Ltd and Everonn Harayana Project being one and the same entity). Thus, taking a different perspective of the same transaction, the CIT (A) proposed disallowance of the interest paid on the ground that there had been diversion of interest-free borrowed loan for reasons, other than business.

5. Notice to show-cause for enhancement appears to have been issued only orally and the records of assessment that have been produced before me reveal an order-sheet note as follows:

> 'CA.R.Thiagarajan, AR, appeared and discussed. The AR was asked to show cause why the assessment cannot be enhanced by disallowing the interest paid to bank as the borrowed business fund was diverted as interest free advance to Everon. Reposted on 08.02.2018 at 4.00 p.m.
>
> 29-12-2017 CT(A)-15'

6. The notice has been evidently understood by the petitioner to mean a proposal for disallowance and enhancement in terms of Section 36(1) (iii) of the Act as may be gleaned from the reply filed by the petitioner on 16.03.2018 to the following effect:

> ' WRITTEN SUBMISSION IN THE MATTER OF SPAARKON TRADING (CHENNAI) PRIVATE LIMITED -ITA NO.132/2016-17-A.Y.2013-14)
>
> 1. The nature of business activity of the Assessee is as under:
>
> a. The Assessee was in the business of buying, selling and trading of computer hardware and software.
>
> b. In 2010, the Assessee tied up with one of it's biggest clients Everonn Education Limited, whereby Everonn Education Limited would lease the computer hardware owned by the Assessee for the project that Everonn Education Limited would manage for the Haryana State Government. This lease would be for a duration of 5 years.
>
> c. The Assessee obtained a loan from Standard Chartered Bank to fund the purchase of equipment needed for the Haryana project, which Everonn Education Limited would manage.
>
> d. The lease income from Everonn Education Limited is offered as income in the Income-Tax return filed by the Assessee. The interest expenditure paid on the loan of Standard Chartered Bank is claimed as an expenditure.
>
> 2. The details of short term loans and advances of Rs.17,04,89,251/- is given in Page No.3
>
> 3. A copy of the sanction letter dated 12.05.2010 of Standard Chartered Bank is enclosed in Page No.4 to 8. It may be noticed, the loan is sanctioned for the specific purpose of purchase of equipments to be leased to Everonn Education Limited. The entire amount of interest expenditure of Rs.2,87,52,372/- represent the interest paid to Standard Chartered Bank on the said loan.
>
> 4. As the loan borrowed is for the specific purpose of purchase of equipments, which is leased out as the part of the business of the

Assessee and the interest paid is on such loan borrowed for the specific purpose, the interest paid on the loan is a business expenditure and is allowable. This position is notwithstanding the fact, the Assessee has extended certain interest free loans to two parties, as such interest free advances were made from sources other than the borrowing from the Standard Chartered Bank. Therefore, it is humbly submitted the interest expenditure claimed by the Assessee is a business expenditure.

In regard I rely upon the following decision:

a. CIT Vs. Bombay Samachar Limited -1969 ITR 723 Bom is enclosed in Page No.9 to 11

b. Deputy CIT Vs. Kamdar Constructions -ITAT, Mumbai dated 25.02.2011 - Followed the decision of Bombay Samachar Limited is enclosed in Page No.12 to 21

5. These Submissions are in addition to my submissions dated 29.12.2017, as to why the provisions of Section 14A cannot be invoked for the disallowance of the interest expenditure, as being done by the Assessing Officer in the impugned order.

6. In view of the above, the Return of Income as filed by the Assessee may kindly be accepted and the additions made in the impugned assessment order may kindly be deleted.

****

R.Thiagarajan.'

7. Thus, the petitioner was in no doubt that the provision invoked for enhancement by the CIT (A) was Section 36(1) (iii) that dealt with 'other deductions' and that interest paid in respect of capital borrowed was allowable as a deduction, only if such capital had been borrowed for the purposes of business or profession. The issuance of notice orally, though inappropriate as a matter of routine, is not a fatal flaw in this case seeing as the petitioner has understood the issue as meant by the officer and has also responded thereto.

8. On the merits of the matter, in my considered view, the necessary facts to adjudicate upon this issue have not been placed before the Authorities and it was incumbent upon the petitioner to have established its case that the capital

borrowed was for the purposes of business or profession only, perhaps by production of the Memorandum containing the objects of the company or other supporting evidences. The Memorandum, incidentally, is placed before me at this stage but has not been admitted, as it is not a document available on record before the respondent authorities. No doubt, the petitioner has circulated the Sanction letter from the Bank wherein the purpose of availing loan is stated to be financing of purchase of equipments to be leased at BOO/BOOT basis to Everonn Education Limited. The equipments are stated to be intended for execution of the contract entered into by the petitioner with the State of Haryana. However, a copy of the contract has also not been placed before any of the Authorities.

9. The CIT (A) thus concluded that the disallowance in terms of Section 36(1) (iii), as proposed, was justified and completed the proceedings in line with the proposal for enhancement.

10. In the light of the discussion as above, I fine no warrant or justification for interfering with the impugned order in terms of Article 226 of the Constitution of India as facts necessary for adjudication of the matter on merits have not been placed before the authorities. Liberty is granted to the petitioner to file a statutory Appeal before the Income Tax Appellate Tribunal (Tribunal) within a period of two (2) weeks from today.

11. Since the Writ Petitions have been filed within the limitation prescribed for filing statutory appeal, such appeal, if filed within the timeline as stipulated aforesaid, shall be taken on file without reference to limitation and disposed within a period of two (2) months from date of conclusion of personal hearing.

12. The petitioner has been protected from recovery by an order of this Court dated 06.08.2018, effective till date. Such protection shall continue till disposal of the Appeal by the Tribunal as above. If no appeal as permitted aforesaid, is filed, the impugned order stands. The Writ Petition is dismissed with liberty as aforesaid. No costs. Connected Miscellaneous Petitions are also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rkp

To
1. The Commissioner of Income Tax (Appeals)-15,
   121, Mahatma Gandhi Road,
   Nungambakkam, Chennai - 600 034.

2. The Assistant Commissioner of Income Tax,
   Non Corporate Circle 18(1), 5th floor,
   Room No.520, Wanaparthy Block,
   121, Mahatma Gandhi Road,
   Nungambakkam, Chennai - 600 034.

+ 1 CC to Mr. A.P.Srinivas, Advocate, SR.10088
+ 1 CC to Mr. Ashok Kumar, Advocate, SR 10208

Writ Petition No.19523 of 2018
and
WMP. Nos.22962 to 22964 of 2018

MRP 29/05/2020