In the High Court of Judicature at Madras

Dated : 05.10.2020

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.917 of 2019

The Commissioner of Income Tax,
Chennai. ...Appellant/Appellant

Vs

M/s.Shriram Investments,
Chennai-4. ...Respondent/Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 20.6.2019 made in ITA.No.2895/Chny/2018 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench for the assessment year 2012-13,

and against the order of the Commissioner of Revenue Tax (Appeals)-2, Chennai dated 24/02/2016 in ITA.No.62 & 208/CIT (A)-2/2014-15 for the Assessment Year 2011-12,2012-13 and against the order of the Deputy Commissioner of Income Tax Non Corporate Circle-2, Chennai, dated 30/12/2014 in PAN/GIR No.AAAFS2590M for the Assessment Year 2012-13.

For Appellant : Mrs.R.Hemalatha, SSC

For Respondent: Mr.R.Sivaraman

Judgment was delivered by T.S.Sivagnanam,J

We have heard Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the appellant – Revenue and Mr.R.Sivaraman, learned counsel appearing for the respondent – assessee.

2. This appeal, filed by the assessee under Section 260A of the Income Tax Act, 1961 (for short, the Act) is directed against the order dated 20.6.2019 made in ITA.No.2895/Chny/2018 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench (for brevity, the Tribunal) for the assessment year 2012-13.

3. The appeal has been admitted on 20.11.2019 on the following substantial questions of law :

> "(1) Whether on the facts and in the circumstances of the case, the Tribunal was right in deleting the disallowance made u/s.36(1)(iii) of the Income Tax Act especially when the Assessee had advanced interest bearing funds without charging any interest? And
>
> (2) Whether on the facts and in the circumstance of the case, the Tribunal was right in not considering the fact that the matching principle in terms of income and expenditure is not applicable when cash method of accounting is followed as the sine qua non for allowability of expenditure is the nexus between the income and expenditure reported for the year in question as applicable in terms of Section 36 and 37 of the Income Tax Act?"

4. It is submitted by the learned counsel on either side that the issue in this case is covered by the decision of this Court in the assessee's own case in TCA.No.166 of 2019 dated 21.2.2019.

5. The relevant portions in the said judgment read thus :

> "6. We have heard the learned counsel for the parties and also gone through the order impugned of the learned Tribunal.
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> 7. A Co-ordinate Bench of this Court, in the case of Assessee itself, for the previous Assessment Years in T.C.A.No.2657 of 2006 and other connected matters, decided on 17.09.2014, had held in favour of the Assessee that deduction under Section 36 (1) (iii) of the Act was allowed, though the Assessee had borrowed the capital for the purpose of business of investments. The relevant portion of the said judgment is also quoted below for ready reference:
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> 'That, while adjudicating the claim for deduction under section 36 (1) (iii) of the Act, the nature of the expense-whether the expense was on capital account or revenue account was irrelevant as the section itself says that interest paid by the assessee on the capital borrowed by the assessee was an item of deduction. That the utilization of

capital was irrelevant for the purpose of adjudicating the claim for deduction under section 36 (1) (iii) of the Act. (see the judgment of the Bombay High Court in the case of Calico Dyeing & Printing Works v. CIT (1958) 34 ITR 265. In that judgment, it has been laid down that where an assessee claims deduction of interest paid on capital borrowed, all that the assessee had to show was that the capital which was borrowed was used for business purpose in the relevant year of account and it did not matter whether the capital was borrowed in order to acquire a revenue asset or a capital asset.'

It may be noted that in India Cements Ltd. v. CIT (1966) 60 ITR 52 (SC), the apex court was specifically pleased to observe that the object of the loan is an irrelevant consideration. In the State of Madras Vs. G.J.Coelho (1964) 53 ITR 186 (SC) , the Supreme Court was dealing with the deduction claimed under section 5 (e) of the Madras Plantations Agricultural Income-tax Act, 1955. While considering the issue, the court was pleased to observe that in principle there is no distinction between interest paid on capital borrowed for the acquisition of a plantation and interest paid on capital borrowed for the purpose of an existing plantation. Both are for the purpose of the plantation. The court further observed that the payment of interest on the amount borrowed for the purpose of the plantations when the whole transaction of purchase and the working of the plantations was viewed as an integrated whole was so closely related to the plantations that the expenditure could be said to be laid out or expended wholly and exclusively for the purpose of the plantations.

8. We may also gainfully refer to the judgment of the Calcutta High Court in CIT v. Rajeeva Lochan Kanoria (1994) 208 ITR 616. The learned court was considering section 36 (1) (iii) and was pleased to observe as under (page 620) :

'The only enquiry that is to be made is whether the payment of interest was in respect of capital borrowed for the purpose of the assessee's business or profession.

There is no dispute that the capital was borrowed in the instant case and interest was paid on the borrowed capital. It is to be established that the amount was borrowed for the purpose of business or profession. The amount borrowed may be utilized for the purpose of acquisition of stock-in-trade or for the purpose of acquisition of capital assets. But so long as the money is utilised for business purposes the interest will have to be allowed as deduction. It is well settled that business expenditure is not confirmed to expenses incurred on revenue account. Capital expenditure may not be allowed as a deduction under section 37 because the section specifically bars any deduction of expenditure of capital nature. But section 36 is differently worded. There is no bar in section 36 (1) (iii) to allowance of interest paid in respect of capital borrowed which has been utilised for purchase of a capital asset. The position of law in this regard was explained by the Supreme Court in the cases of India Cements Ltd. v. CIT (1966) 60 ITR 52 (SC) and State of Madras v. G.J.Coelho (1964) 53 ITR 186 (SC)' (emphasis supplied).

8. We have considered the reasoning given in the decisions referred to supra and are in respectful agreement with the view expressed in the said decisions, for the reason already given by us that there is nothing in Section 36 (1) (iii) of the Act that would dis-entitle the assessee to claim deduction in respect of interest paid on the capital borrowed for the purposes of business.

9. For the foregoing reasons, we uphold the concurrent findings rendered by the Commissioner of Income Tax (Appeals) and the Tribunal and answer substantial question of law against the Revenue and in favour of the assessee. These appeals are dismissed. No costs.'

8. The Hon'ble Supreme Court, in the case of S.A.Builders, cited supra, held that it will depend upon the facts and circumstances of the respective case and unless the money advanced to a sister concern cannot be held to have been advanced

for commercial expediency of the assessee, the interest paid thereon by the borrower Assessee cannot be disallowed under Section 36 (1) (iii) of the Act. Para 36 of the said judgment is quoted below for ready reference :

"36. We wish to make it clear that it is not our opinion that in every case interest on borrowed loan has to be allowed if the assessee advances it to a sister concern. It all depends on the facts and circumstances of the respective case. For instance, if the Directors of the sister concern utilize the amount advanced to it by the assessee for their personal benefit, obviously it cannot be said that such money was advanced as a measure of commercial expediency. However, money can be said to be advanced to a sister concern for commercial expediency in many other circumstances (which need not be enumerated here). However, where it is obvious that a holding company has a deep interest in its subsidiary, and hence if the holding company advances borrowed money to a subsidiary and the same is used by the subsidiary for some business purposes, the assessee would, in our opinion, ordinarily be entitled to deduction of interest on its borrowed loans.'

9. We are of the considered opinion, that, as a matter of fact, no substantial question of law arises in the present case, because, it is essentially a finding of fact as to whether the lower interest paid on the borrowings made by the assessee company from the sister concerns or the group companies is for the purpose of its business or not. Whether it is commercially expedient or not for the Assessee cannot be decided by the Revenue authorities and unless a decision taken in the usual course of business by the Assessee can be held to be arbitrary or motivated, deliberately taken to defeat the purpose of the Revenue, it cannot be held that the lower interest rate paid to the borrowers on the borrowings made by the assessee company is disallowable under Section 36 (1) (iii) of the Act. No such finding of fact has been recorded by the Tribunal. On the contrary, in Para 7 of the

Tribunal's order, quoted above, the Tribunal, in our opinion, rightly held that when the cash system of accounting was adopted by the Assessee, an Investment Company, whose business is only to borrow and lend or invest, the same cannot be said to be not in the business interest or commercially expedient for the purpose of business and the concept of 'Matching Principles', which has been applied by the Assessing Authority and the CIT (A) in the present case, was not really applicable. It is not for the Revenue authorities to substitute their own wisdom or notion about the rate of interest agreed to between the parties, including the group companies and, as such, the finding of fact about commercial expediency or absence thereof is a finding of fact, out of which, no substantial question of law can be said to be arising, requiring our consideration under Section 260A of the Act. Moreover, since in the case of Assessee company itself, this Court has only decided on similar facts earlier and dismissed the Revenue's Appeal, we do not find any reason to take a different view of the matter for the Assessment Years in question before us.

10. Therefore, this Appeal, filed by the Revenue, is also liable to be dismissed and it is, accordingly, dismissed."

6. Following the said decision, the above tax case appeal is dismissed and the substantial questions of law framed are answered in against the Revenue. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

2.The Deputy Commissioner of Income Tax,
Non Corporate Circle-2, Chennai.

3.The Commissioner of Income Tax (Appeals)-2,
Chennai-34.

+1cc to Mr.R.Sivaraman, Advocate Sr.32958
+1cc to Mr.T.Ravikumar, Advocate Sr.32965

kk[co]
srg 02/12/2020