Form No.(J2)

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

Present :

THE HON'BLE JUSTICE T.S. SIVAGNANAM

A N D

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

IA NO.GA/2/2017
(Old.GA/1676/2017)
ITAT/189/2017

PRINCIPAL COMMISSIONER OF INCOME TAX-3, KOLKATA
-Versus-
M/S. FAIRLUCK COMMERCIAL CO. LIMITED

For the Appellant: ***Mr. Radhamohan Roy, Adv.***

For the Respondent: ***Mr. A. K. Dey. Adv.***
Mr. Sanjoy Bhowmick, Adv.

Heard on : 06.12.2021

Judgment on : 06.12.2021

T. S. SIVAGANANAM, J. : The appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' in brevity) is directed against the order dated 6th May, 2016 passed by the Income Tax Appellate Tribunal, Kolkata "A" Bench (the 'Tribunal' in short) in ITA No.1427/Kol/2013 for the assessment year 2007-08.

The revenue has raised the following substantial questions of law for consideration:

> "*(a) Whether in the facts and circumstances of the case, the learned Income Tax Appellate Tribunal, "A" Bench, Kolkata is right in law and fact in holding that the interest claimed by the respondent/Assessee was automatically eligible for deduction under Section 36(1)(iii) of the Income Tax Act, 1961?"*
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> *(b) Whether in the facts and circumstances of the case, the learned Income Tax Appellate Tribunal, "A" Bench, Kolkata is right in law and fact in holding that the borrowings as made by the respondent/Assessee were made for the purpose of lending business and once it was proved that the interest payments were made thereon, the same shall automatically be eligible deduction under Income Tax Act, 1961?"*

We have Mr. Smarajit Roychowdhury, learned counsel for the appellant/revenue and Mr. A.K. Dey, learned counsel for the respondent/assessee.

Learned counsel appearing for the respondent/assessee submitted that this appeal cannot be pursued by the revenue as it is below the threshold limit of Rs.1 crore prescribed by the circular issued by the Central Board of Direct Taxes (CBDT). Learned counsel for the respondent does not have instruction on the aspect. Therefore, we proceed to hear out the appeal and decide the matter on merits.

The question involved was whether the assessing officer was right in disallowing the assessee's claim on interest expenditure on the facts and circumstances of the case. The tribunal noted that the assessee is a non-banking financial company and had advanced loan to several parties and derived interest income out of the lending made in the earlier years as well as during the year under consideration i.e (A.Y. 2007-08). Further, the tribunal accepted the stand taken by the assessee that the assessee being a non-banking financial company has to minutely follow prudential norms prescribed the Reserve Bank of India on revenue recognition. Further, after going through the facts of the case, the tribunal noted that the assessee has not given interest free advance to any of the parties at the time of granting of loan and this is only because of the fact that non-payment of the prescribed number of instalments, the assessee was forced, as per law, to stop recognition of interest income on accrual basis. Further, the tribunal on facts noted that the borrowings made by the assessee had been utilized for advancing funds to various parties. Thus, the tribunal concluded that the borrowings were made by the assessee for the purpose of its lending business. Having been satisfied with the facts of the case, the tribunal held that the assessee shall be automatically eligible for protection under Section 36(1)(iii) of the Act. The tribunal also followed the decision of this Court in the case of *Caldern Pharmaceuticals Ltd. vs. CIT* reported in 265 ITR 244 (Cal). With the above factual finding, the appeal filed by the assessee was allowed.

We find that the tribunal being the last fact finding authority has re-appreciated the facts and granted relief. We find that there is no question of law much less substantial question of law arising for consideration in this appeal. Accordingly, the appeal fails and is dismissed.

The connected application for stay (IA No.GA/2/2017, old No.GA/1676/2017)) also stands closed.

(T.S. SIVAGNANAM, J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)

A/s./bp