IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2022

CORAM

THE HON'BLE MR.JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

TAX CASE (APPEAL) NO.647 OF 2009

M/s.Centwin
370, Kamaraj Road
Tirupur - 641 604. ...Appellant
PAN : AABFC8440M

Versus

The Assistant Commissioner of Income Tax
Circle I, Tirupur ...Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order dated 21.10.2008 passed by the Income Tax Appellate Tribunal, "D" Bench, Chennai, in I.T.A.No. 2491/Mds/2006 and against the Order of the Commissioner of Income Tax (Appeals)-II, Coimbatore dated 11.10.2006 made in ITA No.177/06-07 and the Assessment order of the Assistant Commissioner of Income Tax, Circle-I, Tirupur dated 31.03.2006 made in PAN/GIR No.AABFC8440M for the Assessment year 2003-04.

For Appellant : Mr.R.Sivaraman

For Respondent : Mr.M.Swaminathan
Senior Standing Counsel

JUDGMENT
(Judgment of the Court was delivered by R. MAHADEVAN, J.)

This tax case appeal has been filed by the appellant / assessee, calling in question the correctness of the order dated 21.10.2008 passed by the Income Tax Appellate Tribunal, 'D' Bench, Chennai, in I.T.A.No.2491/Mds/2006 relating to the assessment year 2003-04.

2. The appellant is a firm engaged in the business of manufacture and exporter of hosiery garments. For the assessment year 2003-04, the appellant had filed a return of income on 12.02.2004 admitting a total income of Rs.1,25,02,827/-, which was processed under Section 143(1) of the Income Tax Act, 1961 (in short 'the Act'). The assessee had admitted a sum of

Rs.93,82,884/- being the gross interest received from the fixed deposits as income from business, on the premise that the interest income on fixed deposits is closely linked with the business of the assessee; and there was interest payment also to the Bank on borrowed capital and the interest received though not considered, subsequently as profits derived from exports, but netted against the interest payment on borrowed capital and thereby claimed as profits derived from export eligible for deduction under section 80HHC. The Assessing officer by order dated 31.03.2006, held that since the interest income is assessed under the head 'other sources', interest paid on borrowed capital and debited in the profit and loss account is not allowable against the interest received and accordingly, reduced the deduction under section 80HHC.

3. Aggrieved by the said order of assessment, the appellant preferred appeal before the Commissioner of Income-tax (Appeals), who by order dated 11.10.2006 held that the interest income on fixed deposits is assessable under the head 'other sources' and not under the head 'business'. The CIT(A) also rejected the alternative plea of proportionate interest under section 57(iii) of the Act. Challenging the same, the appellant went on further appeal before the Income Tax Appellate Tribunal. By order dated 21.10.2008, the Tribunal without going into the factual finding and the submissions made thereunder, dismissed the appeal by relying upon the judgment of this Court in the case of Dollar Apparels reported in 294 ITR 484. Therefore, the present tax case appeal by the assessee.

4. By order dated 28.07.2009, this tax case appeal was admitted on the following substantial questions of law :-

> "1. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the interest income earned out of deposits made from the business funds including borrowed funds in the course of running the business of the appellant is to be assessed as income from other sources and not income from business?
>
> 2. Whether on the facts and circumstances of the case, the Appellate Tribunal is right in holding that the interest income be assessed under the head 'Income from other sources' when in fact per se, it has a direct nexus to the business of the appellant?
>
> 3. Whether on the facts and circumstances of the case, the Appellate Tribunal is right in law in

holding that interest on borrowed capital cannot be set off against the interest earned on Fixed deposits?

4. Whether on the facts and circumstances of the case, the Appellate Tribunal should have remitted the matter back for a finding whether the interest income is to be assessed as business income or income from other sources and whether borrowed funds were utilized for making the deposits ?

5. Whether on the facts and circumstances of the case, the Appellate Tribunal is right in law in not entertaining the alternative submission that proportionate interest paid on the borrowed capital should be under Section 57(iii) of the Act?

6. Whether on the facts and circumstances of the case, the Appellate Tribunal was right in not dealing with the principle of mutuality wherein the transactions with the same banker split into or spread over to two or more accounts shall not by itself may any difference if the substance of the transaction is the same. ”

5. When the matter was taken up for consideration, the learned counsel appearing for both sides jointly submitted that the substantial questions of law 1 and 2 are squarely covered in favour of the assessee and against the Revenue, in the light of the decision of this Court in JVS Exports v. Assistant Commissioner of Income-tax, Circle-I, Madurai in T.C. (Appeal) No. 2079 of 2008 dated 23.07.2019.

6. For better appreciation, the relevant paragraphs of the aforesaid decision are extracted below:

“28.As pointed out by us earlier, the facts of the case are vividly clear and the Fixed Deposits have been created by the bank themselves by carving out a portion of the export sale proceeds on realisation and retaining them as Fixed Deposits in the name of the assessee to be retained by the bank as additional security for the loan availed by the assessee for their export business.

29.As mentioned earlier, the conversion of a portion of the sale proceeds as Fixed Deposits was done by the bank themselves and not on the volition of the assessee. Therefore, we are fully convinced that the transaction was connected and closely linked with the assessee's business activity.

30.Thus, we hold that the Tribunal erred in dismissing the assessee's appeal.

31.For the above reasons, the appeal filed by the assessee is allowed and the substantial question of law is answered in favour of the assessee. No costs.”

7. Following the decision of this Court as cited supra, which is applicable to the facts of the present case, the substantial questions of law 1 and 2 are answered in favour of the assessee and against the Revenue. The other substantial questions of law are left open to the parties for determination in an appropriate case.

8. Accordingly, the tax case (appeal) is disposed of. No costs.

Sd/-
Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

Maya

To

1.The Income Tax Appellate Tribunal,
Madras “D” Bench, Chennai.

2.The Assistant Commissioner of Income Tax
Circle I, Tirupur.

3.The Commissioner of Income Tax (Appeals)-II,
Coimbatore.

4.The Assistant,
Income Tax Appellate Tribunal,
Rajaji Bhavan, III[rd] Floor,
Besant Nagar, Chennai - 600090.

+1cc to Mr.M.Swaminathan, Advocate Sr.No.2615

T.C.(A) No.647 of 2009

GPL(CO)
RVM(08/02/2022)