

ORDER

OD – 25

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

ITA/19/2013

COMMISSIONER OF INCOME TAX, KOLKATA-IV
VERSUS
JCT LIMITED

BEFORE:

The Hon'ble Justice SURYA PRAKASH KESARWANI
The Hon'ble Justice RAJARSHI BHARADWAJ

Date : 19th December 2023.

Appearance:

Mr. Smarajit Roychowdhury, Advocate
... for appellant.

Mr. J.P. Khaitan, Senior Advocate
Mr. Akhilesh Kr. Gupta, Advocate
Mr. Soham Sen, Advocate
... for respondent.

1. Heard Sri Smarajit Roychowdhury, learned counsel for the appellant / Income Tax Department and Sri J.P. Khaitan, learned senior advocate assisted by Sri Akhilesh Kr. Gupta, learned counsel for the respondent/assessee.
2. This appeal was admitted by this Court by order dated 29.01.2013, on the following substantial question of law:-

“Whether the Learned Tribunal erred in allowing deduction of interest on borrowed capital without first satisfying itself that the borrowed capital had been utilized for the purpose of

business in accordance with Section 36(1)(iii) and Section 37(1) of the Income Tax Act, 1961?”

3. Despite full disclosure of facts regarding loans given by the assessee to its subsidiary companies and source of funds, supported by documentary evidences, the assessing officer made addition in the income of the assessee on the presumption that the loan was given out of the borrowed capital by the assessee. The assessing officer passed the said order on direction of the Commissioner of Income Tax issued under Section 263 of the Income Tax Act, 1961 [hereinafter referred to as ‘the Act 1961’].

4. In appeal, the CIT(A) upheld the order passed by the assessing officer, which was also affirmed by the Tribunal in appeal filed by the assessee. The assessee carried the matter to this Court in ITA No.271 of 2005, which was disposed of by judgment and order dated 17.06.2009, directing the Income Tax Appellate Tribunal to decide the appeal afresh after consideration of the materials which have been placed in the paper book and in particular with regard to the contents of the on the questions of law raised by the assessee.

5. On remand, the Tribunal passed the impugned order dated 15.06.2012 in ITA No.1135/Kol/2003 (assessment year 1994-95), whereby the appeal of the assessee was allowed. Aggrieved with the aforesaid order of the ITAT, the Income Tax Department has filed the present appeal.

6. We have heard learned counsel for the parties and perused the record of this appeal. We find that the Tribunal has considered each of the loans given by the assessee to its subsidiaries and the source from which the loan

was given. The Tribunal has recorded the findings of fact based on evidences on record that the assessee has given loan from the funds generated by it by way of sale of shares etc. and the borrowed capital was not utilized by the assessee for giving loans to its subsidiaries. The findings recorded by the Tribunal in this regard, in paragraphs 5 to 10 of the impugned order, are reproduced below:-

“5. In the light of the direction of Hon'ble High Court as reproduced above, we have taken up the appeal for hearing and will decide the issue. We have heard Ld. counsel for the assessee Shri R. N. Bajoria along with Shri A. K. Gupta and Ld. CIT, DR Shri A. K. Mahapatra. We have gone, through assessee's paper book consisting of pages 1 to 336. We find from the facts that during the previous year relevant to AY 1992-93 an amount of Rs.37.56 cr. was advanced by assessee to its subsidiary Poly Investments Co. Ltd. and during the course of assessment proceedings and even now before us Ld. counsel for the assessee demonstrated that such advance was made out of the sale proceeds of equity shares of 62.60 lacs held by it of JCT Electronics Ltd. to Chohal Investments Ltd. These details are available at assessee's paper book pages 313 to 316. Even the details of this amount is also enclosed by assessee in its paper book at page 210 i.e. the statement of accounts of Poly Investments Ltd. It was confirmed by assessee that the sale of said shares was disclosed in the schedule of investment and Balance Sheet of the assessee for the year ended on 31.03.1992. This information is available in assessee's paper book at page 297. The assessee has enclosed these papers and these were available before AO during the course of assessment proceedings.

It was also explained that in the computation of total income of assessee for AY 1992-93 the capital gain earned on the sale of the above shares of JCT Electronics Pvt. Ltd. was disclosed. The computation of income is filed at assessee's paper book pages 310 and 311.

6. Further, in the previous year relevant to AY 1993-94 the assessee advanced a sum of Rs. 12.30 cr. to its subsidiary Chohal Investments Co. Ltd. out of sale proceeds of shares of Ballarpur Industries Ltd. held by it. The assessee has enclosed copy of bank statement of HSBC in which sale proceeds of such sale were deposited and from which the advance was made to Chohal Investments Ltd. These details are available at assessee's paper book page 334. The assessee has disclosed profit arising from sale of shares of Ballarpur Industries Ltd. for AY 1993-94 and these are included in Balance Sheet for the year ending 31.03.1993. These details are enclosed at assessee's paper book pages 332 and 333. The Balance Sheet and Schedule of assets are also enclosed at assessee's paper book pages 319 and 320. It was the argument of assessee that in such circumstances, no disallowance in respect of any interest on borrowed fund can be made. We find that the AO during the course of original assessment proceedings for AY 1993-94 examined the aforesaid facts and made assessment vide order dated 20.03.1997 and no such disallowance was made by AO in respect of this amount of borrowed funds. The assessee has enclosed copy of assessment order at page 240 of assessee's paper book.

7. In respect to amount advanced to Chohal investment Ltd. of Rs.5.65 cr., we find that this is part of outstanding advance during the year from the same concern. The facts are that during the year ended 31.03.1994, the assessee sold 2 lacs equity

shares of Ballarpur Industries Ltd. for an amount of Rs.5.65 cr. to Chohal Investment Ltd. and the sale proceeds of these shares were part of outstanding advance during the year from Chohal Investment Ltd. These facts are disclosed in the Income tax return and computation of income filed for the relevant assessment year 1994-95 and even the profit derived from sale of the said shares was duly recorded and disclosed in the return of income. These details are available at assessee's paper book page 202. The assessee has disclosed the sale of such shares in the Balance Sheet which is at page 188 of assessee's paper book and this transaction of sale of shares was duly accepted by AO during the assessment proceedings for AY 1994-95. Further, the advance to Gupta & Syal Ltd. during the year was only Rs. 15,000/- and rest was opening balance which is verified from assessee's paper book page 7. The amount advanced to Kishan Chand Spinning Mills Ltd. during the year was at Rs.85,981/- on various dates for smaller expenses and the rest Rs.25.62 lacs was the opening balance of earlier years. This fact also we have verified from assessee's paper book page 9. From the accounts of the Kedernath Kishan Chand Finance & Investment Ltd., we find that no advance was made during the year and entire amount relates to the earlier year's balances i.e. the opening balance. We find another interesting fact that in the case of Poly Investment Ltd. the total advance during the year reduced and this we have verified from page 3 of assessee's paper book. Even from the statement of accounts of the assessee for the year ended 31.03.1994 relevant to assessment year under appeal, the details are available at page 4 of assessee's paper book of Chohal Investment Ltd. page 3 of assessee's paper book of Poly Investment Ltd., page 7 of Gupta & Syal Ltd., page 9 of Kishan Chand Spinning Mills Ltd., page 8 of Kedernath Kishan Chand Finance & Investments Ltd. As

pointed out by Ld. counsel for the assessee that in the following assessment years i.e. AY 1995-96 to 1997-98 no such disallowance was made by revenue of the interest on borrowed funds with reference to the above said advances, we find that the statement is correct. The assessee has enclosed copies of assessment orders for these three assessment years at pages 256, 265 and 274 of assessee's paper book. The Ld. counsel has drawn our attention to the fact that the amounts outstanding against various concerns are most of it were brought forward from earlier years. This fact can be clear from the statement of opening balance and closing balance in respect of various concerns which has been reproduced from the records of the assessee as under:

Sl. No.	Name of Concern	Opening Balance as on 01.04.93	Closing Balance as on 31.03.04
1.	Chohal Investments Ltd.	Rs.59,80,28,792	Rs.16,30,14,292
2.	Poly Investments Ltd.	Rs.43,54,00,163	Rs.33,55,95,062
3.	Gupta & Syal Ltd.	Rs.1,41,404	Rs.1,56,004
4.	Kishanchand Spinning Mills Ltd.	Rs.26,52,979	Rs.26,49,071
5.	Kedarnath Kishanchand Finance & Investment Ltd.	Rs.22,51,470	Rs.22,51,470

8. From the above facts and circumstances, we find that the amount outstanding against the two subsidiaries i.e. Chohal Investment Ltd. and Poly Investment Ltd. was substantially reduced during the year and there is no addition of advance at all. In the case of subsidiary Gupta & Syal Ltd., there was increase of Rs. 15,000/- only and in case of Kishanchand Spinning Mills Ltd. there is increase of Rs.85,981/-. In the case of Kedernath Kishanchand Finance & Investment Ltd. there is no increase at all. We find from the above facts and circumstances that the total

sum of Rs.46.95 lacs given to Chohal Investment Ltd. during June, 1993 to October 1993 is on account of sale of shares the sum of Rs.46.95 lacs and balance Rs.19.38 lacs was adjusted in October, 1993 against the sale value of shares of Rs.19.38 lacs allotted to assessee and the said concern. On March 31, 1994, a sum of Rs.5.65 cr. was advanced to Chohal Investment Ltd. out of sale proceeds of 2 lacs shares of Ballarpur Industries Ltd. The profit on sale of share of Ballarpur Industries Ltd. is disclosed by the assessee and apart from the above, an amount of Rs. 50,000/- was debited on account of rent receivable and Rs. 500/- was paid to an employee. Accordingly, we are of the view that no part of borrowed sum was utilised during the year for making any advance to sister concern Chohal Investment Ltd.

9. Similarly, in the case of Poly Investment Ltd. in June and July, 2003 Rs.90.30 lacs was paid and in September, 1993 a sum of Rs. 2.45 cr. was paid. We find that the sum of Rs. 2.45 cr. was received back from Poly Investment Ltd. on 28th October, 1993 and a further sum of Rs. 30,000/- was debited on account of service charges and this sum was interest free for only five weeks with that concern. As regards to the sum of Rs. 19.30 lacs there was no other fresh advance and this sum was given out of internal accrual of the assessee. We find that in the three prior AYs i.e. 1991-92, 1992-93 and 1993-94 no such disallowance was made with reference to above such advance. In such circumstances, whether the revenue can make disallowance or not.

10. From the above facts it is clear that the amounts advanced by assessee to the abovementioned five concerns are out of internal accruals or out of profits earned by assessee by way of sale of shares or by way of consideration received on account of

sale of shares. From the facts and circumstances it is also clear that during the year except the amount of Rs. 15,000/- in the case of Gupta Syal Ltd. and Rs.85,981/- in the case of Kishan Chand Spinning Mills Ltd. there is no increase in the outstanding amounts of above five concerns. This being a very negligible and small amounts and by taking the clue from this no disallowance of interest on borrowed capital can be made. Apart from that the AO from the very beginning i.e. from AYs 1991-92, 1992-93 and 1993-94 and even in subsequent assessment years 1995-96 to 1997-98 the advances were there but no disallowance of interest on borrowed capital is made by AO and accepted as it is. From the records it is noticed that assessment orders are available in assessee's paper book as mentioned above, it established that the advance to subsidiary companies or other concerns as mentioned above, are given out of sale proceeds of shares or the profits of shares or the internal accruals. In the instant case, the assessee who for the purpose of running of its business required funds and borrowed money from banks and other financial institutions and used for the purpose of business as is evidently clear from the above discussion because the amount advanced to its subsidiaries and others is out of its own funds. While making a disallowance or while arriving at a finding that the interest bearing funds are used for the purpose of interest free advances there should be a finding that there is a nexus between the borrowings from the bank and other financial institutions by the assessee and lending it to its subsidiaries and others free of interest must be found out but such nexus must be found out from the material available on records only. We are of the view that interest on money borrowed for the purpose of business is a necessary item of expenditure in a business. For allowance of a claim for deduction of interest under this provision, all i.e.

necessary is that, firstly, the money as that of capital, must have been borrowed by the assessee, secondly, it must have been borrowed for the purposes of business. And thirdly, the assessee must have paid interest on the, so borrowed, amount. It is not the requirement of the law that the assessee must have shown that the borrowing of the capital was necessary for the purpose of business and so that if at the time of borrowing the assessee had sufficient amount of its own fund and for that purpose deduction could not be allowed. Even otherwise, this case is squarely covered by the decision in the case of J. K. Industries Ltd. Vs. CIT 61 DTR 153 wherein it is held that in a situation in which interest free advances granted by the assessee to the subsidiary companies are less than cash profit generated by the assessee it should be presumed that the subsidiaries were paid out of the profits of the assessee which is far in excess of amount paid to the subsidiaries"

In view of the above facts and circumstances and above referred authorities, we are of the view that the assessee is entitled for allowance of interest on borrowed capital which is used for the purpose of business, we allow the claim of assessee and reverse the orders of the lower authorities."

7. We requested learned counsel for the appellant to point out any perversity in the findings of fact recorded by the Tribunal as afore-quoted, but no illegality or perversity could be pointed out. We also find that the findings recorded by the Tribunal are findings of fact based on evidences on record. Therefore, the findings so recorded cannot be interfered with.

8. For all the reasons afore-stated, we do not find any error of law or fact in the impugned order of the Tribunal. Consequently, the substantial question of law is answered against the revenue and in favour of the assessee. The appeal being totally devoid of merit is hereby dismissed.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

S. Kumar