

ITA/30/2022
IA No.GA/2/2020
GA/3/2020
IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

SAUMABHA DASGUPTA
VERSUS
THE COMMISSIONER OF INCOME TAX (APPEAL) – 6, KOLKATA & ANR.

BEFORE
The Hon'ble Justice HARISH TANDON
The Hon'ble Justice PRASENJIT BISWAS
Date: 5th July, 2023

Appearance
Mr. Raghunath Das, Advocate
Ms. Monalisa Das, Advocate
...for the appellant
Mr. Prithu Dudheria, Advocate
...for the respondents

The Court: This is virtually a second round of litigation before this Court, assailing an order of Income Tax Appellate Tribunal, Kolkata Bench "SMS" Kolkata dismissing the appeal filed by the assessee/petitioner pertaining to the assessment year 2009-10. While filing the income tax return, the petitioner disclosed the income and further deducted the amount of interest paid on personal loan and other loans. At the time of scrutiny, it was found that substantial amount of money was deposited in cash with the savings bank account by the petitioner who is admittedly a medical practitioner and purchased a CT Scan machine for his profession or business. The department was of the view that the personal loan cannot be equated with the business loan where the interest is an allowable

expenditure and added the component of the interest to the income and made an assessment of the tax payable by the petitioner.

The Appellate Tribunal concurred with the decision of the assessing officer, which was further challenged by the petitioner before the Tribunal. The Tribunal succinctly jotted down the core issues involved therein. The first issue relates to a deduction of the interest paid on the personal loan and the second one relates to depreciation to the extent of 40% over the life saving machine (CT Scan) under Section 32 of the Income Tax Act. Both the assessing officer as well as the appellate authority proceeded on the *ipsi dixit* of the petitioner as it claimed the depreciation of 15% in the relevant assessment year. Though the contention appears to be at a subsequent stage of a proceeding that he is entitled to depreciation to the extent of 40% of life saving machine, the Tribunal being confronted with the aforesaid two issues proceeded to hold that since the depreciation to the extent of 40% is permissible for a life saving machine, which in fact, has been allowed for MRI, i.e. Magnetic Resonance Imaging, there is no justification in disallowing the similar depreciation in relation to CT Scan machine as both functions on tomography. It is held by the Tribunal that CT Scan machine is an earlier life saving machine but with the advancement of the technology the MRI machine has replaced and therefore, both can be equated on the same pedestal. The Tribunal further held that though the petitioner claimed 15% depreciation on the same life

saving machine but law permits depreciation to the extent of 40% and it would be unjust and unfair to an assessee if the assessing officer allowed the depreciation as claimed before ignoring the statutory provision. On both counts, the Tribunal was of the view that the assessing officer as well as the appellate authority committed error in not permitting the interest paid by the petitioner on personal loan which was admittedly used for business purposes and depreciation to the extent of 15% which in fact should be allowed to the extent of 40% under Section 32(1) of the Income Tax Act.

The department assailed the order of Tribunal before this Court and the said appeal was disposed of modifying the order relatable to the percentage of depreciation without interfering and touching upon the merit and the other part of the order of the Tribunal. This Court held that the petitioner is entitled to depreciation to the extent of 15% only instead of 40% as allowed by the Tribunal which obviously led the matter to go before the assessing officer for revising the assessment in the light of the judgment of this Court.

The second round of litigation started after revised assessment order has been issued by the assessing officer and claiming the amount of tax liable to be paid by the petitioner for the aforesaid assessment year. At the first blush, it is contended by the petitioner that the moment the Tribunal has interfered with the order of the assessing officer as well as the

appellate authority in disallowing the interest paid on the personal loan as allowable expenditure, the assessing authority cannot include the said amount in assessing the taxable income for the purpose of ascertaining the tax to be paid thereupon. There is no dispute that the depreciation to the extent of 15% was allowed instead of 40%. The petitioner challenged the notice of demand as well as the revised assessment order taking a further plea that the assessing officer not only included the interest paid on the personal loan but also included the interest paid on the other loan which was also disallowed in an earlier litigation. However, the Tribunal has assessed the said part of the order and therefore, instead of Rs.26 lakhs and odd, an amount of Rs.59 lakhs should be excluded from the computation of the taxable income of the petitioner. According to the petitioner, both the interest on the personal loan and on the other loan were the subject matter of challenge in an earlier round of litigation and the moment the Tribunal has interfered with the order of the assessing officer as well as the appellate authority in declining to allow the aforesaid amount as allowable expenditure, the authority cannot include the said amount in the income of the petitioner for the relevant assessment year.

We have anxiously perused the order passed by the assessing officer as well as the Appellate Tribunal in the first round of litigation wherefrom it appears that the assessing officer was of the view that the moment the personal loan has been taken by the petitioner, the interest

paid thereupon cannot be treated as an allowable expenditure in the business run by the petitioner as it cannot be equated with the business loan. The Tribunal, however, did not concur with the aforesaid finding that once the said amount is used for business, the nomenclature loses its importance. Therefore, both the authorities ought not to have disallowed the interest paid on the personal loan and directed the said amount to be included as allowable expenditure. The computation for assessment would also reveal that the amount of interest paid on personal loan has been taken off from the taxable income and thereafter, the assessing officer proceeded to revise the assessment order in the light of the directions passed by this Court in an earlier appeal. The moment the point does not appear to have been taken by the petitioner in an earlier round of litigation which was restricted to a specific issue, it is not open to the petitioner to agitate such point before the assessing officer whose task is to revise the assessment order in tune with the direction of the High Court. In the appeal, our endeavour has failed to find in the assessment order that the amount of interest paid on the personal loan has been included within the gross income of the petitioner and therefore, the contention of the petitioner does not appear to be logical or sound both on facts and law.

However, we notice that while computing the income and calculating the tax to be paid, the authority had taken note of a sum of Rs.97,000/ and odd having paid as TDS. The manner in which the

calculation has been made appears to us that after determining the total taxable income, the tax is assessed and/or determined and the statutory penalty and/or interest leviable thereupon were also added thereto and the total amount arrived was subject to the deduction of amount of TDS deposited with the authority. The manner in which the calculation has been made as well as the mode of such calculation is faulty one for the reason that penalty and interest appears to have been charged even on the amount of TDS which, in our opinion, is not justified. The proper mode of calculation is that after ascertaining the total amount of tax payable on the total amount of taxable income, the authority must deduct the amount of TDS and thereafter proceed to impose penalty and tax on the basis of the statutory provisions. To that extent, the order is modified. The assessing officer is directed to revise the assessment order in the light of the observations/directions made hereinabove and it goes without saying that the same will be done within two weeks from the date of communication of this order.

The appeal and the connected applications are disposed of.

[HARISH TANDON, J.]

[PRASENJIT BISWAS, J.]