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A.F.R.

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]

ORIGINAL SIDE

ITA/30/2021

M/S. V2 RETAIL LIMITED

VS

DEPUTY COMMISSIONER OF INCOME TAX,
CIRCLE - 10, KOLKATA

BEFORE :

THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI

And

THE HON'BLE JUSTICE AJAY KUMAR GUPTA

Date : 2nd July, 2024

Appearance :

Sri J.P. Khaitan, Sr. Adv.

Sri Saurabh Bagaria, Adv.

Sri Pranav Sharma, Adv.

...for the appellant.

Smt. Smita Das De, Adv.

... for the respondent.

1. Heard Sri J.P. Khaitan, learned senior advocate assisted by Sri Saurabh Bagaria, learned counsel for the appellant/assessee and Smt. Smita Das De, learned senior standing counsel for the respondent/revenue.
2. This appeal has been admitted by this Court by order dated 11.11.2021 on the following substantial questions of law :

"i) Whether LIC Mutual Fund can be regarded as Public Financial Institutions as specified in Clause (a) of Explanation 4 to Section 43B of the Act?

ii) Whether an amount of Rs.9,75,16,996/- being "interest provision" as at the year end made in the

accounts is allowable considering the fact that the said payment relates to LIC Mutual Fund and hence does not attract the provisions of Section 43B of the Act?"

Facts:

3. Briefly stated facts of the present case are that the appellant/assessee is a company registered under the Companies Act, 1956. Its certain debentures were purchased by 'LIC Mutual Fund'. A sum of Rs.9,75,16,996/- accrued towards interest during the assessment year 2009-10 payable to the aforesaid 'LIC Mutual Fund'. Payment of the aforesaid amount of interest was extended for another two years to be ending on 31.3.2011. Since the interest has become payable on accrual basis during the assessment year 2009-10, therefore, the appellant/assessee claimed it as deductible expenditure in its profit and loss account. The assessing officer while passing the assessment order dated 8.12.2011 disallowed the aforesaid amount of interest of Rs.9,75,16,996/- on unsecured debentures on the ground that it has not been paid within the stipulated period. Aggrieved with the aforesaid assessment order, the appellant/assessee filed an Appeal No.357/XII/Cir-10/2011-12 before the Commissioner of Income Tax (Appeals) - XII, Kolkata which was partly allowed by order dated 19.8.2013. The appellant/assessee succeeded on the point of

deduction of interest of Rs.9,75,16,996/-. While allowing the appeal on the point of interest on debentures, the CIT(A) held that Section 43B of the Income Tax Act, 1961 (hereinafter referred to as the 'Act, 1961') covers only financial institution and not mutual fund and since the 'LIC Mutual Fund' is not a financial institution under Section 43B of the Act, 1961 read with Section 4A of the Companies Act, 1956, therefore, the interest claimed as deduction by the appellant/assessee is allowable.

4. Aggrieved with the order of the CIT(A), the revenue filed ITA/2627/Kol/2013 (DCIT, Circle -10, Kolkata Vs. M/s. Vishal Metal Limited) before the Income Tax Appellate Tribunal, Kolkata Bench 'A', Kolkata. The ITAT allowed the appeal of the revenue by the **impugned order dated 15.3.2017** and held in para 13 as under :-

"A plain reading of the above provision reveals that the Life Insurance Corporation of India comes within the ambit for public financial institution. The name of LIC mutual fund is not appearing in the definition of public financial institution as defined u/s 4A of the Companies Act, 1956. However, the fact that the LIC mutual fund is an arm of the Life Insurance Corporation of India cannot be ignored. When the Life Insurance Corporation of India is covered under the definition of public financial institution being a parent company then also the same analogy shall be

extended to the arm of it. Hence, we are of the view that the definition of public financial institution should also cover the LIC mutual fund being an arm of Life Insurance Corporation of India.

It is also important to note that LIC mutual fund was established on 20th April 1989 by Life Insurance Corporation of India, being an associate company of India's premier and most trusted brand, LIC Mutual Fund is one of the well known players in the asset management sphere. With a systematic investment discipline coupled with a high standard of financial ethics and corporate governance, LIC Mutual Fund is emerging as a preferred Investment Manager amongst the investor fraternity. The definition of public financial institution came with effect from 1st February 1975 and since then life insurance Corporation is treated as public financial institution. On the contrary, the LIC mutual fund was established dated 20th April 1989 which shows that the LIC mutual fund came into existence much after the date when Life Insurance Company of India was established. Therefore, on this count also the LIC mutual fund should be treated as public financial institution.

It was also observed that CIC has treated the LIC mutual fund as a public financial institution in its order dated 28-10-2009 where the issue was raised under the Right to Information Act. The relevant part of the order is reproduced below:-

"38. As regards LIC Mutual Fund Assets Management Co. Limited, the respondents have submitted that the ratio of judgment, in the case of Tamil Nadu Road Development company is not applicable to LIC Mutual fund since LIC Mutual Fund is an independent organization and not substantially financed by appropriate government. The submissions of the respondents fall to convince. The LIC of India is a body established, constituted, owned and controlled by Central Government which is the Appropriate Government for the LIC of India and the funding by LIC of India and their general control over the functioning of the LIC Mutual Fund can be nothing but an indirect funding and control by the Appropriate Government, LIC of India is a public authority having been constituted by an Act of Parliament. LIC of India in turn in order to further carry out their public function have formed LIC Mutual Fund approved for formation 'through subsidiary' which has to function under LIC's control. The respondent Mutual Fund is fully financed and administratively controlled by the LIC of India through a Board of Trustees. The trustees of the Board who manage the LIC Mutual Fund are appointed with the approval of LIC of India. LIC of India has the power to change the Trustees from time to time. The corpus of the Trust amounting to Rs.10 lakhs was contributed by the LIC. The Trust Deed provides that a further sum not exceeding Rs 25 crores shall be made available as initial contribution to the Trust by the LIC. The LIC has floated the Mutual Fund to map up the additional savings from the public in rural and semi-urban areas

and it would be receiving considerable, amount of insurance business from the Mutual Fund. LIC of India for the above purpose provides to the Mutual Fund all suitable help and guidance which includes payment of initial corpus of the Trust, financial assistance to the Trust, renting out premises after housing the Mutual Fund, provision of initial office equipment and deputation of suitable employees etc: the Chairman of LIC is authorized to take such administrative decisions as may be required periodically so as to ensure the smooth launching of the LIC Mutual Fund and its successful operation.

39. Now coming to GK Housing Finance Limited, the Commission's finding is not any different. The shareholding of six Public Authorities in GIC Housing Finance is 4.68% and coupled with the control they exercise over the GIC Housing Finance is sufficient to bring them within the ambit of the definition of "Public Authority as defined in Section 2(h) of the Right to Information Act. 2005."

In view of above we find that the interest expenses claimed by the assessee to the LIC Mutual Fund are covered under the provisions of section 43B of the Act. Accordingly the assessee was required to make the payment of the interest before the due date of filing income tax returns as specified under section 139(1) of the Act. Hence we have no hesitation to reverse the order of Id CLT(A). Hence, this ground of appeal raised by the Revenue is allowed."

5. Aggrieved with the aforesaid order of the ITAT, the appellant/assessee has filed the present appeal.

Submission :

6. Learned counsel for the appellant/assessee submits that 'LIC Mutual Fund' is a trust established under a trust deed dated 20.4.1989 with initial contribution to the trust by the Life Insurance Corporation of India Limited for Rs.25 crores. The aforesaid 'LIC Mutual Fund' is managed by a company 'LIC Mutual Fund Assets Management Company Limited' incorporated under the Companies Act, 1956. The Life Insurance Corporation of India has been established under the Life Insurance Corporation Act, 1956. Clause (d) of Section 43B read with Explanation 4(a) of the Act, 1961 and Section 4A of the Companies Act, 1956 leaves no manner of doubt that clause (d) of Section 43B is applicable only to those 'public financial institutions' enumerated under Section 4A of the Companies Act, 1956, in which 'LIC Mutual Fund' does not find mention. Therefore, Section 43B is not applicable with respect to the accrued interest in question. The Tribunal committed a manifest error of law to assume that 'LIC Mutual Fund' is an extended arm of Life Insurance Corporation of India, whereas both the entities are separate legal entities. In support of his submissions, Sri Khaitan has carried us to the order of

the CIT(A) and the impugned order of the ITAT as well as the provisions of Section 43B of the Act, 1961, Section 4A of the Companies Act, 1956, the Life Insurance Corporation Act, 1956, the Indian Trust Act, 1882 and Securities and Exchange Board of India (Mutual Funds) Regulations, 1996.

7. Learned counsel for the respondent/revenue submits that there is no dispute that the 'LIC Mutual Fund' is a trust created under the Indian Trust Act, 1882 and it is managed by 'LIC Mutual Fund Assets Management Company Limited' incorporated under the Companies Act, 1956 and the Life Insurance Corporation of India has been established under the Act of Parliament i.e. Life Insurance Corporation Act, 1956. She submits that since the trust has been established/sponsored by the Life Insurance Corporation, therefore, the Tribunal has correctly held the 'LIC Mutual Fund' to be an extended arm of Life Insurance Corporation of India. Therefore, the 'LIC Mutual Fund' being a constituent of Life Insurance Corporation of India shall fall within the ambit of Section 4A of the Companies Act, 1956 and, consequently, Section 43B of the Act, 1961 is attracted. She submits that the Tribunal has lawfully reversed the order of the CIT(A) and held that the interest

in question is not deducted in view of Section 43B of the Act, 1961.

Discussion and Findings :

8. We have carefully considered the submissions of the learned counsel for the parties and perused the paper book.
9. As per definition **clause 2(q) of the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996** (hereinafter referred to as the "SEBI Mutual Funds Regulations, 1996"), **'Mutual Fund' means** the fund established in the form of a trust to raise monies through the sale of units to the public or a section of the public under one or more schemes for investing in securities, money markets, gold or gold related instruments, silver or silver related instruments, real estate assets and other assets and instruments as may be specified by the Board from time to time. **Clause 10 of SEBI Mutual Funds Regulations, 1996** specifies necessary conditions for grant of registration under clause 9 of the Regulations. **Clause 14** of the aforesaid Regulations mandatorily requires that 'Mutual Fund' shall be constituted in the form of a trust and the instrument of a trust shall be in the form of a deed duly registered under the provisions of the Indian Registration Act, 1908 (16 of 1908) executed by the sponsorer in favour of the trustees named in such an instrument. Thus,

as per SEBI Mutual Funds Regulations, 1996, 'Mutual Fund shall be constituted in the form of a trust' and the instrument of trust shall be in the form of a deed which shall be duly registered under the Indian Registration Act, 1908. Thus, 'LIC Mutual Fund' is a trust and the trust deed has been duly registered under the Indian Registration Act, 1908. The aforesaid "LIC Mutual Fund" is a trust of movable property, which has been created in terms of Section 6 of the Indian Trust Act, 1882 [hereinafter referred to as 'the Trust Act']. The Life Insurance Corporation of India can, at best, be said to be an author of the trust or settlor of the trust, but the said trust and the Life Insurance Corporation of India both are separate legal entities. While the "LIC Mutual Fund" Trust is governed by the provisions of the Indian Trust Act, 1882 read with SEBI Mutual Fund Regulations, 1996, the Life Insurance Corporation of India is governed by the provisions of the Life Insurance Corporation Act, 1956.

10. **Clause (d) of Section 43B of the Act, 1961** refers to "any sum payable by the assessee as interest on any loan or borrowing from any **public financial institutions** or ..." Explanation 4(a) to Section 43B provides that "public financial institutions" shall have the meaning assigned to it under

Section 4A of the Companies Act, 1956. **Section 4A of the Companies Act, 1956** is reproduced below:-

*"[4A. **Public financial institutions.** - (1) Each of the financial institutions specified in this sub-section shall be regarded, for the purposes of this Act, as a public financial institution, namely:-*

- (i) the Industrial Credit and Investment Corporation of India Limited, a company formed and registered under the Indian Companies Act, 1913 (7 of 1913);*
- (ii) the Industrial Finance Corporation of India, established under section 3 of the Industrial Finance Corporation Act, 1948 (7 of 1948);*
- (iii) the Industrial Development Bank of India, established under section 3 of the Industrial Development Bank of India Act, 1964 (18 of 1964);*
- (iv) **the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956);***
- (v) the Unit Trust of India, established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963);*
- (vi) the Infrastructure Development Finance Company Limited, a company formed and registered under this Act.]*

[***]

(2) Subject to the provisions of sub-section (1) the Central Government may, by notification in the Official Gazette, specify such other institution as it may think fit to be a public financial institution:

Provided that no institution shall be so specified unless-

- (i) it has been established or constituted by or under any Central Act, or*
- (ii) not less than fifty-one per cent. of the paid-up share capital of such institution is held or controlled by the Central Government.]”*

11. From perusal of Section 4A of the Companies Act, 1956, it is evident that the list of 'public financial institutions' given in it is exhaustive. Clause (iv) of Sub-section (1) of Section 4A of the Companies Act, 1956 specifically mentions "Life Insurance Corporation of India", established under Section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956)". It does not mention "LIC Mutual Fund" which is a Trust established under the Indian Trust Act. Further, Sub-section (2) of Section 4A empowers the Central Government to specify, by notification in the official gazette, such other institutions as it may think fit to be a 'public financial

institution', provided that no institution shall be so specified unless - (i) it has been established or constituted by or under any Central Act, or (ii) not less than 51% of the paid-up share capital of such institution is held or controlled by the Central Government.

12. We find that neither "LIC Mutual Fund" Trust is mentioned in the list given under Sub-section (1) of Section 4A nor the "LIC Mutual Fund" Trust has been established or constituted by or under any Central Act. Therefore, the "LIC Mutual Fund" Trust is not a public financial institution under Section 4A of the Companies Act, 1956. Consequently, Clause (d) of Section 43B of the Act, 1961 is not attracted under the facts and circumstances of the present case.

13. The language of Section 4A of the Companies Act, 1956 and Section 43B of the Act, 1961 being plain and unambiguous, no interpretation can be given, other than what is clearly expressed by the plain language of the aforesaid provisions. The list of public financial institutions given in Sub-section (1) of Section 4A of the Companies Act, 1956 being exhaustive and not illustrative, nothing can be added to it. It is not the case of the respondent that there is any notification under Section 4A of the Companies Act, specifying "LIC Mutual Fund" as a 'public financial

institution'. That apart, it is also not the case of the respondent/Revenue that "LIC Mutual Fund" Trust qualifies the two conditions mentioned in Sub-section (2) of Section 4A of the Companies Act, 1956. Since "LIC Mutual Fund" is not "Public Financial Institution" under Section 43B of the Act, 1961 read with Section 4A of the Companies Act, therefore, the interest of Rs.9,75,16,996/- on unsecured debentures payable by the appellant-assessee to the "LIC Mutual Fund" is not covered by Section 43B of the Act, 1961. Consequently, it could not be disallowed in the hands of the appellant-assessee on the ground of non-compliance of conditions of Section 43B.

14. The above discussion leads to an irresistible conclusion that the Income Tax Appellate Tribunal has committed a manifest error of law to hold that "LIC Mutual Fund" is a 'public financial institution' under Section 43B of the Act, 1961. Therefore, the disallowance of Rs.9,75,16,996/- invoking the provisions of Section 43B of the Act, 1961 cannot be sustained and consequently, the impugned order to that extent deserves to be set aside.

15. For all the reasons afore-stated, the **appeal is Allowed** to the extent indicated above. The impugned order dated 15.03.2017 in ITA No.2627/Kol/2013 (AY 2009-10) passed by the

Income Tax Appellate Tribunal, Kolkata Bench 'A', Kolkata, to the extent it relates to the disallowance of Rs.9,75,16,996/- under Section 43B of the Act, 1961, is hereby set aside. The substantial questions of law are answered in favour of the assessee and against the Revenue.

(SURYA PRAKASH KESARWANI, J.)

(AJAY KUMAR GUPTA, J.)