

O-23

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

ITA/156/2011
COMMISSIONER OF INCOME TAX, KOLKATA II, KOLKATA
VS
WEST BENGAL INDUSTRIAL DEVELOPMENT CORPORATION LTD.

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
-A N D-
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
DATED : 1ST APRIL, 2024

Appearance :
Mr. Om Narayan Rai, Adv.
Mr. Prithu Dudheria, Adv.
...for appellant
Mr. J.P. Khaitan, Sr. Adv.
Mr. Sanjay Bhowmik, Adv.
Mrs. Swapna Das, Adv.
....for respondent

1. Heard Mr. Om Narayan Rai, learned senior standing Counsel for the appellant along with Sri Prithu Dudheria, learned junior standing counsel for the appellant and Sri J.P. Khaitan, learned senior counsel assisted by Mr. Sanjay Bhowmik, learned counsel for the respondent/assessee.
2. This appeal has been admitted on the following substantial question of law:-

“(i) Whether the learned Tribunal below committed substantial error of law in reversing the order of the CIT (A) in respect of addition on

account of the accrued interest on loan and advances amounting to Rs.901/- lakh without appreciating the fact that the assessee cannot be permitted to adopt mercantile basis for payment of interest by it and claim benefit of cash system in respect of interest receivable by him.”

3. The respondent/assessee is a Government financial corporation.
4. A Sum of Rs. Nine crore was added in the hands of the respondent/assessee invoking Section 145 of the Income Tax Act, 1961. The CIT (A) affirmed the order of the assessing officer following the order of the ITAT in the case of *Ms. K.S. Mehta (HUF) Vs. Commissioner of Income-tax (2005) 278 ITR 59* for the assessment years 1986-87, 1987-88 and 1988-89 decided on 16.08.1999.
5. The findings recorded by the Tribunal in the impugned order is reproduced below :-

“4. We have considered the rival submissions and we have carefully considered the contention of the Ld. D.R. as well as the Ld. Counsel for the assessee before us. We do find that the assessee is not to be taxed on income which has not been earned by him. In the published accounts subject to Govt. Audit, the assessee clearly indicated its accounting policy with respect to accounting of interest and advances given to borrowers which is to be taken into consideration on receipt basis. As per our observation this income has been accounted for only for the purpose of maintaining control

over the borrowers' account by intimating them the amount of interest they own to the assessee. With a view to improving the viability of banks, financial institutions, State Financial Corporation interest on sticky loans shall be charged to tax only in the year in which the interest has actually been received or in credited to P/L A/c whichever is earlier. We, therefore directed the A.O. to tax the amount of interest only that amount which has been received during the year following the direction of the Tribunal in the case of the assessee for earlier years as enumerated by taxing authorities in view of the guidelines being followed by them in Circulars of CBDT with respect to treatment of such income from time to time.

5. In the result the appeal is allowed as indicated above."

6. It is not disputed before us by learned Counsel for the appellant that in earlier assessment years, similar direction has been issued by the I.T.A.T. as issued in the impugned order, which has been implemented by the appellant. That apart, we find that the order of the CIT(A) is based on the order of the I.T.A.T. in the case of K.S. Mehta, which was set aside by this Court by judgment and order dated 11.02.2005 in I.T.A. No. 35 of 2000 reported in (2005) 278 ITR 59.
7. In view of the aforesaid, we do not find any merit in this appeal. The appeal deserves to be dismissed and is hereby dismissed.

8. The substantial question of law as quoted above is answered in favour of the assessee and against the revenue on the facts of the present case.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

sg/GH.