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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 100/2019

THE PR. COMMISSIONER OF INCOME TAX -6 ..... Appellant

Through: Mr. Sunil Agarwal, SSC with Mr. Shivansh B. Pandya, JSC, Mr. Utkarsh Tiwari & Mr. Amaan Ahmed Khan, Advs.

versus

MAHALAXMI DESIGN PVT. LTD. ..... Respondent

Through: Mr. Ajay Wadhwa, Ms. Ragini Handa & Mr. Ujjwal Jain, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **15.02.2024**

1. The Income Tax Department ["**Department**"] questions the correctness of the order rendered by the Income Tax Appellate Tribunal ["**ITAT**"] dated 23 November 2017 and proposes the following questions of law for our consideration:

A. Whether on the facts and circumstances of the case, the ITAT is legally justified in deleting the disallowance of Rs. 12,02,07,944/- made by the Assessing Officer on account of interest expenses even when the assessee had not started its business activities?

B. Whether on the facts and circumstances of the case, the ITAT is legally justified in deleting the disallowance of interest expenses by ignoring the fact that the expenses incurred prior to the start of the business will have to be capitalized?

C. Whether on the facts and circumstances, the ITAT erred in not considering the decision of the Supreme Court in the case of **Tuticorin Alkai Chemicals & Fertilizers Ltd. vs CIT** [(1997) 6 SCC 117] ignoring the fact that the said are similar to the facts of the present case and therefore applicable in the present case?

2. As is manifest from the recordal of facts by the ITAT, it has found that the assessee had borrowed funds from certain persons and advanced it thereafter to others. It had earned interest in that regard and from the persons to whom the money had been advanced. It was on the aforesaid basis that the assessee sought deductions by virtue of Section 57(iii) of the Income Tax Act, 1961 ["**Act**"].

3. The Department appears to have contested that position before the Commissioner of Income Tax (Appeals) ["**CIT(A)**"] as also before the ITAT referring to the judgment in *Tuticorin Alkai Chemicals.* The ITAT has, in our considered opinion, rightly found that in the case of *Tuticorin Alkai Chemicals* the expenses had been used for the purposes of setting up of factories. The facts of that case were thus clearly distinguishable and in fact clearly inapplicable to the case set up by the assessee here.

4. We note that the ITAT has on due consideration returned the following findings:

> "**10.** We have carefully considered the arguments of both the sides and perused the material placed before us. The Revenue has heavily relied upon the decision of Hon'ble Apex Court in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd. (supra). The facts in that case were that for the purpose of setting up of the factories, the company had taken term loans from various banks

and financial institutions. That part of the borrowed funds which was not immediately required by the company was kept invested in short-term deposits with banks. Such investments were specifically permitted by the memorandum and articles of association of the company. The company had also deposited certain sums with the Tamil Nadu Electricity Board. It had also given interest-bearing loans to its employees to purchase vehicles. Up to the assessment year 1980-81, interest earned by the company from the various loans given by the company and also from the bank deposits was shown as income and was taxed accordingly. For the accounting year ending on June 30, 1981 (assessment year 1982-83), the assessee received a total amount of interest of Rs.2,92,440/-. In its return of income filed on June 22, 1982, the company disclosed the said sum of Rs. 2,92,440/- as "income from other sources". It also disclosed business loss of Rs. 3,21,802/-. After setting off the interest income against the business loss, the company claimed the benefit of carry forward of net loss of Rs. 29,360/-. The company later on realized its mistake and on December 26, 1984, it filed a revised return showing business loss of Rs.3,21,802/-. It claimed that according to the accepted accounting practice, interest and finance charges along with other pre-production expenses had to be capitalized, and that, therefore, the interest income of Rs. 2,92,440/- should go to reduce the pre-production expenses (including interest and finance charges), which would ultimately be capitalized. The Income-tax Officer rejected the assessee's claim that the interest income was not exigible to tax. The view of the Income-tax Officer was upheld by the Commissioner of Income-tax (Appeals). The company's further appeal to the Income-tax Appellate Tribunal was dismissed. In view of the conflict of decisions between the Madras and Andhra Pradesh High Courts, the Tribunal referred the question regarding taxability of income, directly to the Supreme Court.

11. From the above, it is evident that in the said case, the term loans were obtained from the bank and financial institutions for the purpose of setting up of the factories. However, part of the borrowed funds which was not immediately required for the purpose for which it was borrowed, the same was invested in short term deposit by the bank. Initially, the assessee offered the interest received as its income from other sources which was set off against the business loss. Subsequently, the assessee filed revised return and claimed that interest income should be set off against the pre-production expenses and should not be taxed as income from other sources. Now, when we compare the facts of the above case with that of the assessee's case, we find that the facts in the case under appeal before us are altogether different. In the case of Tuticorin Alkali Chemicals and Fertilizers Ltd. (supra), the money was borrowed for the purpose of setting up of the factory. In the case under appeal before us, the real estate business which is the main business of the assessee as per memorandum and articles of association has not commenced at all. The money was not borrowed for any specific purposes. The assessee had borrowed the money from some persons and has advanced it to others. He paid interest to the persons from whom the money was borrowed and charged interest from the person to whom the money was advanced. The details of the persons from whom money was borrowed and to whom money was advanced are at page III of the assessee's paper book.

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12. In the above list, the last four parties are parties from whom the assessee has borrowed the money and first five parties are the parties to whom the money has been advanced. When the borrowed money and the money advanced is set off, it is found that except ₹40,74,720/, the entire borrowed money was advanced. The total borrowed was ₹290 crores and 50 lakhs, out of which, more than ₹290 crores was advanced by the assessee. Thus, in this case, there is direct and clear nexus of money borrowed by the assessee and the money advanced by the assessee.

13. In the case of Tuticorin Alkali Chemicals and Fertilizers Ltd. (supra), admittedly, the money was borrowed for the purpose of setting up of the factory. However, since the borrowed funds were not immediately required, the same were invested in short term deposits with the bank. However, the facts in the case of the assessee are altogether different. The main object as per memorandum of articles of association is the development of infrastructure and real estate business. However, during the year under consideration, no infrastructure project or real estate development project had commenced and therefore, the question of borrowing of any money for the purpose of such project does not arise. Therefore, in our opinion, the facts of the assessee's case are altogether different than in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd. (supra). Further, in that case, the assessee initially offered the interest income as income from other sources but, subsequently by filling the revised return, the assessee claimed that interest income should not be assessed but should go to reduce the pre-production expenses. In the case under appeal, the assessee has never disputed the taxability of interest income. The assessee offered the interest income under the head income from other sources and claimed interest payment there from.

14. At the time of hearing before us, the assessee submitted that such interest payment is duly allowable under Section 57 (iii) of the Income-tax Act, 1961. Section 57 provides the deductions which are allowable while computing the income under the head income from other sources. Sub-section (iii) thereof reads as under :-

> "57. The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely :-
>
> (iii) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income;"

15. From the above, it is evident that any expenditure which is laid out or expended wholly or exclusively for the purpose of earning of interest income is allowable u/s 57(iii). In the case under appeal before us, we find that the borrowed money has been utilized for the purpose of giving advances to others. There is a direct nexus between the money borrowed by the assessee and money advanced by the assessee. The assessee paid interest on the money borrowed by it and has received the interest on the money advanced by it. Therefore, we have no hesitation to hold that the interest paid by the assessee was incurred wholly and exclusively for the purpose of earning of interest income and therefore, the same was rightly claimed u/s 57(iii) and the learned CIT(A) rightly directed for allowing the same.

16. On these facts, the decision of Hon'ble Jurisdictional High Court in the case of Vodafone South Ltd. Vs. CIT - [2015] 378 ITR 410 (Delhi) would be squarely applicable, wherein Hon'ble Jurisdictional High Court held at page 420 of the report as under:-

> "The sum of Rs.25 crores drawn by the assessee on December 24, 2001, in terms of HSBC's sanction letter was transferred to SCL on the very same date. Without the facility of credit by the HSBC, the assessee could not have advanced the loan to SCL. Therefore, there was a direct nexus between the earning of interest on the loan advanced by the assessee to SCL and payment of interest to HSBC on the loan drawn in terms of the sanction letter dated August 2, 2001. The income earned on the loan advanced to SCL was rightly offered to tax by the assessee as "Income from other sources". Since the interest paid to HSBC on the loan availed of was the nature of an expenditure wholly and exclusively laid out for the purpose of earning the interest income, it ought to be permitted to be netted against such "Income from other sources" in terms of section 57(iii). "

17. After considering the decision of Hon'ble Apex Court in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd. (supra), the above decision was given by the Hon'ble Jurisdictional High

Court. The facts of the assessee's case are identical. Therefore, the above decision of Hon'ble Jurisdictional High Court would be squarely applicable. Considering the facts of the case and respectfully following the above. decision of Hon'ble Jurisdictional High Court, we hold that learned C1T(A) was fully justified in directing the Assessing Officer to allow' deduction of interest paid by the assessee against the interest received by the assessee."

5. In view of the aforesaid, there exists no justification to interfere with the view taken by the ITAT. The appeal raises no substantial question of law. It shall consequently stand dismissed.

YASHWANT VARMA, J

PURUSHAINDRA KUMAR KAURAV, J

FEBRUARY 15, 2024/kk