Commissioner of Income-tax and another - Appellants @HASH Himatsingka Seide Ltd.

Court: KARNATAKA HIGH COURT

Date of Decision: April 5, 2016

Acts Referred: Income Tax Act, 1961 - Section 14A, Section 36(L)(iii)
Income Tax Rules, 1962 - Rule 8D

Citation: (2016) 388 ITR 463

Hon'ble Judges: Jayant Patel and B.V. Nagarathna, JJ.

Bench: Division Bench

Advocate: K.V. Aravind, Advocate, for the Appellants; Smt. Vani H., Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Jayant Patel, J. - The appellant-Revenue has preferred the present appeals by raising the following substantial questions of law :

1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the assessee is entitled for deduction under

section 10B of the Income-tax Act, 1961, by following its earlier order passed in the case of the assessee even when the assessee has not fulfilled

the conditions set out in the said provision and the orders relied upon by the Tribunal has not reached finality ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the issue of disallowance under section 14A

of the Act being sustained at 5 per cent, of exempted income, i.e., Rs. 25,23,655/- does not call for any interference even when the assessing

authority was correct in making disallowance under section 14A of the Act and the Commissioner of Income-tax (Appeals) had modified the same

in the absence of proper reasonings ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in setting aside the disallowance of interest amounting to

Rs. 44,71,565/- under section 36(1)(iii) of the Act even when the assessing authority had rightly disallowed the same by holding that the assessee

had advanced inter-corporate loans amounting to Rs. 21,03,58,510/- to its 100 per cent, subsidiary concern M/s. Himatsingka Wovens Pvt. Ltd.,

interest-free for which no interest was charged by the assessee and the assessee had failed to prove that the same was for the business purpose ?

2. We have heard Mr. K. v. Aravind, learned counsel appearing for the appellants-Revenue and Ms. Vani H., learned counsel appearing for the

respondent-assessee.

3. We may record that so far as question No.1 is concerned, learned counsel for the appellant-Revenue has not pressed the said question and

therefore the said question would not arise in the present appeals.

4. So far as question No. 2 is concerned, the Income-tax Appellate Tribunal (hereinafter referred to as ""the Tribunal"" for brevity) in the impugned

order has considered the said aspects from para-7. 3 and 8 which read as under:

7.3 We have heard both parties at length and perused and carefully considered the material on record and the judicial decisions cited. It is seen

from the order of the learned Commissioner of Income-tax (Appeals) that while he has held that the Assessing Officer was correct in making of the

disallowance under section 14A of the Act, the provisions of rule 8D would not be applicable for the year under consideration, i.e., the assessment

year 2007-08 but would be applicable, with effect from March 24, 2008, i.e., for and from the assessment year 2008-09. In holding that a

reasonable disallowance of 5 per cent, of exempted income i.e. Rs. 25,23,655/- is to be made in respect of the expenditure incurred to earn such

income, the learned Commissioner of Income-tax (Appeals) followed the decisions of the co-ordinate benches of this Tribunal in the case of ING

Vysya Bank Ltd. in I. T. A. No. 589/Bang/2006 dated April 23, 2008 and the case of Asst. CIT v. Ingersoll Rand India Ltd. in I. T. A. No.

7254/Mum/Bangalore ''A'' Bench dated August 30, 2010. In view of the aforesaid judgments of the co-ordinate benches of this Tribunal (supra)

and on an appreciation of the facts of the case on hand, we are of the view'' the order of the learned Commissioner of Income-tax (Appeals) on

the issue of the disallowance under section 14A of the Act being sustained at 5 per cent, of exempted income, i.e., Rs. 25,23,655/- does not call

for any interference and we therefore uphold the order of the learned Commissioner of Income-tax (Appeals) on this issue. Consequently both the

grounds raised by the Revenue at SI. Nos. 5 to 7 and by the assessee at S. No. 2 of its grounds of appeal are dismissed . . .

8. In the result, the Revenue''s appeal is dismissed.

5. It may also be recorded that in the decision of the Bombay High Court in case of Godrej and Boyce Mfg. Co. Ltd. v. Deputy CIT reported

at (2010) 328 ITR 81 (Bom), the view taken was that rule 8D of the Income-tax Rules, (hereinafter referred to as the ""I.T. Rules"" for short)

would apply with prospective effect and not retrospectively, has also been considered by the Tribunal.

6. As per the decision of the Bombay High Court in the above referred case, once rule 8D of the Income-tax Rules, is held to be having

prospective effect, naturally it could not be applied to the assessment year in question and therefore, the view taken by the Tribunal cannot be said

to be erroneous nor it can be said that any substantial question of law would arise for consideration.

7. However, Mr. K.V. Aravind, learned counsel appearing for the appellants-Revenue did rely upon the decision of the Kerala High Court in the

case of CIT v. Catholic Syrian Bank Ltd. reported in (2012) 344 ITR 259 (Ker) and contended that though the said case was pertaining to

assessment year 2007-08, the applicability of rule 8D of the Income-tax Rules was accepted by the Kerala High Court and therefore, a different

view is said to have been taken. Under the circumstances, the appeal may deserve consideration on question No. 2.

8. We may record that in the said decision of the Kerala High Court, the question did not arise at all for consideration before the Kerala High

Court as to whether rule 8D of the Income-tax Rules is having retrospective effect or prospective effect. On the contrary at para 3 of the

judgment, it has been recorded as under (page 265 of 344 ITR) :

According to both counsel for the assessees proportionate disallowance is called for only under sub-section (2) read with rule 8D of the Income-

tax Rules which came into force from 2007-08 onwards and the same cannot be applied for any earlier assessment year.

9. Therefore the judgment can hardly be said to be on the point decided for considering the applicability of rule 8D of the Income-tax Rules with

retrospective effect as sought to be canvassed. Further, in any case, there is no consideration on the aspects of prospectivity or retrospectivity of

rule 8D of the Income-tax Rules. It is hardly required to be stated that the decision of any High Court would not be a precedent by deducing the

result on facts of the case and the effect thereon. But it can be considered as a precedent only if the point is specifically considered and decided in

either way. Under the circumstances, the decision of the Kerala High Court is of no help to the learned Counsel for the appellants - Revenue.

10. Once the point is already concluded as per the decision of the Bombay High Court referred to here in above, we do not find that any

substantial question of law viz., question No. 2 would arise for consideration as sought to be canvassed.

11. On question No. 3 the relevant discussion of the Tribunal from paras 10.5.1 to 10.5.3 read as under :

10.5.1 We have heard the rival submissions and perused and carefully considered the orders of the authorities below, the assessee''s submissions

and the material on record. From the details on record, it is seen that there is no dispute with regard to the fact that the assessee had borrowed

funds from banks for acquiring fixed assets for its new unit at Hassan, as well as term loans and working capital of its existing operational units at

Seide and Filate for manufacturing fabrics and yam. The learned authorised representative has furnished break up of the interest debited to profit

and loss account for the relevant period which evidences that the interest of Rs. 44,71,565/- was claimed as follows :

(a) On term loan for Filate and Siede units Rs. 44,20,762/- and

(b) On working capital for Filate and Siede units Rs. 50,803/-.

Therefore the facts that the entire interest paid on the term loan taken for acquiring fixed assets for its new unit at Hassan has been capitalized as

work-in-progress has evidently not been claimed as a revenue expenditure is, in our view, factually established.

10.5.2 We also find from the submissions of the learned authorised representative that the assessee company has been earning profits year on year

and had a net worth of approximately Rs. 600.71/- crores, whereas the loan advanced to its subsidiary M/s. Himatsingka Wovens P. Ltd. during

the period under consideration, was only Rs. 9.60 crores and the aggregate loans advanced by the assessee to this subsidiary including that of

earlier year is approximately Rs. 21.03. crores. We also observe from the order of assessment, that the Assessing Officer has not established with

any material evidence that the loans advanced interest free by the assessee to its subsidiary, Himatsingka Wovens P. Ltd. were diverted to it by the

assessee from out of the term loan taken by it from banks for the existing manufacturing units at Filate and Seide or from out of loans taken for

working capital for its existing units at Filate and Seide.

10.5.3 In view of the established fact that the interest of Rs. 44,71,565/- claimed by the assessee in its profit and loss account for the period under

consideration pertained to-

(i) The term loan taken for the existing manufacturing units at Filate and Seide amounting to Rs. 44,20,762/-, and

(ii) Working capital loan taken for the existing units at Filate and Seide amounting to Rs. 50,803/-, it is, in our opinion, factually clear that the

interest on the term loan for the new Hassan unit of the assessee company has been capitalised and what has been charged by the assessee to the

profit and loss account is only interest pertaining to its existing manufacturing units at Filate and Seide. In this view of the matter, as discussed from

para 10.1 to 10.5.3 of this order (supra), we are of the opinion that the disallowance of interest amounting to Rs. 44,71,565/- under section 36(1)

(iii) of the Act made and confirmed by the authorities below is unsustainable on facts and is, therefore, accordingly deleted. It is ordered

accordingly.

The aforesaid shows that the Tribunal has after undergoing the examination of the record found that the amount of Rs. 44,20,762/- was pertaining

to the term loan taken for the existing manufacturing unit at Falite and Seide and it has also found that the amount of Rs. 50,803/- is pertaining to

working capital loan taken for the existing unit at Falite and Seide and both the aforesaid amount totalling to Rs. 44,71,565/- are towards interest

claimed by the assessee.

12. Once the interest is of a loan taken for the existing manufacturing unit, may be as term loan or may be working capital, the interest cannot be

disallowed. Further on the question of diversion of fund, it is by now well settled that the business wisdom of the assessee cannot be substituted by

the Assessing Officer. Further the loan was actually taken for establishing a new unit and the utilisation thereof is proved.

13. Under these circumstances, we find that it cannot be said that the Tribunal has committed an error in deleting the disallowance made by the

Assessing Officer or Commissioner of Income-tax (Appeals) of the amount of interest of Rs. 44,71,565/-. In our view, no substantial question of

law vide question No. 3 would arise for consideration as sought to be canvassed.

14. In view of the above, both the appeals are dismissed.