
Commissioner of Income Tax Vs J.R. Diamonds Pvt. Ltd.

Income Tax Appeal No. 500 of 2013

Court: Bombay High Court

Date of Decision: March 11, 2015

Acts Referred:

Income Tax Act, 1961 - Section 260A

Hon'ble Judges: G.S. Kulkarni, J.; M.S. Sanklecha, J.

Bench: Division Bench

Advocate: P.C. Chhotaray, for the Appellant; Atul K. Jasani and P.C. Tripathi, Advocates for the Respondent

Judgement

1. This Appeal under Section 260A of the Income Tax Act, 1961 (the Act), challenges the order dated 29th August, 2012 passed by the Income

Tax Appellate Tribunal (the Tribunal) for the Assessment Year 2007-08.

2. The Revenue has formulated the following question of law for our consideration:

Whether, on the facts and the circumstances of the case and in law, the Tribunal was justified in holding that the interest free loans advance by the

assessee to its sister concern were for business purpose without appreciating the fact that commercial expediency was not proved by the

assessee?

3. The Respondent claimed an expenditure of Rs.51.91 lakhs on account of interest paid on Rs.8.66 Crores borrowed from American Express

Bank in June 2005. The Respondent-Assessee immediately on the very day that it borrowed the amount of Rs.8.66 Crores from the American

Express Bank advances to its group concern one M/s. Suraj Diamonds Consultancy Private Limited. The Assessing Officer after enquiry found

that M/s. Suraj Diamond Consultancy Private Limited was not a trade creditor and, therefore, disallowed the claim of Rs.51.95 lakhs being the

interest paid on Rs.8.66 Crores to American Express Bank. In appeal, the Commissioner of Income Tax (Appeals) [CIT(A)] recorded a finding

of fact that during the Assessment Year 2007-08, the Respondent-Assessee had trade transaction with its group concern - M/s. Suraj Diamonds

Consultancy Private Limited. In spite of the holding that there was business relationship between the two, the interest paid was disallowed on the

ground that the advance was given in June 2005 and the trade transaction took place only in the subject Assessment Year in particular on 16th

March, 2007. On the aforesaid ground, the order of the Assessing Officer was upheld.

4. On further appeal, the Tribunal by the impugned order recorded a finding of fact that the amounts were advanced by the Respondents to its

group concern for purchase of precious and semiprecious stones. After recording the aforesaid fact, the impugned order relied upon the decision

rendered in the case of another group concern of the Respondent-Assessee wherein on similar facts, the disallowance of interest expenditure was

deleted. Accordingly, the impugned order allowed the appeal of the Respondent-Assessee.

5. The grievance of the Appellant Revenue is that the reliance upon the decision of the Tribunal in case of another group concern of the

Respondent-Assessee was not appropriate as the particular facts such as the date of the loan, the date it was advanced and the manner in which

the amounts were utilized by the group concern etc., are not brought on record. Moreover, it is also submitted that the decision of the Supreme

Court in S.A. Builders Ltd. Vs. Commissioner of Income Tax (Appeals), Chandigarh and Another, on which reliance is placed by the Tribunal in

the impugned order was rendered in the context of the amount being advanced by holding company to its subsidiary company. It is further

submitted that the Apex Court in the above decision has observed that every case of interest on borrowed loan is to be decided upon the facts and

circumstances of that case and no universal test can be applied without taking into account the facts existing in each case. It was particularly

emphasized that impugned order does not record/ establish any business relationship and, therefore, Apex Court's decision in S.A. Builders

(supra) become inapplicable.

6. In the present facts, we find that the CIT(A) has in the impugned order rendered a finding of fact that there was trade transaction between the

Respondent-Assessee and its group concern - M/s. Suraj Diamonds Consultancy Pvt. Ltd. during the subject Assessment Year i.e. A. Y. 2007-

08. Once the fact of business relationship between the Respondent-Assessee and the group concern is established and accepted, then the amount

advanced by the Respondent-Assessee to its group concern would result in allowing of interest expenditure incurred by the Respondent-Assessee

on the amount of loan borrowed by him. As observed by the Apex Court in S.A. Builders (supra) as under:

We agree with the view taken by the Delhi High Court in Commissioner of Income Tax Vs. Dalmia Cement (B.) Ltd., that once it is established

that there was nexus between the expenditure and the purpose of the business (which need not necessarily be the business of the assessee itself),

the Revenue cannot justifiably claim to put itself in the armchair of the businessman or in the position of the board of directors and assume the role

of decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize his

profit. The income tax authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities

must not look at the matter from their own view point but that of a prudent businessman. As already stated above, we have to see the transfer of

the borrowed funds to a sister concern from the point of view of commercial expediency and not from the point of view whether the amount was

advanced for earning profits.

7. In view of the above, the view taken by the Tribunal in the impugned order is a reasonable and possible view. Accordingly, no substantial

question of law arises for our consideration.

8. Thus, Appeal dismissed. No order as to costs.