

(2014) 12 GUJ CK 0049
In the Gujarat High Court
Case No : Tax Appeal No. 314 of 2002

Asst. Commr. of Income Tax

APPELLANT

Vs

VXL India Ltd.

RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:

Income Tax Act, 1961 — Section 143(1)(a), 143(3), 260A, 30, 31

Citation : (2014) 12 GUJ CK 0049

Hon'ble Judges : Kaushal Jayendra Thaker, J; K.S. Jhaveri, J

Bench : Division Bench

Advocate : Pranav G. Desai, Advocate for the Appellant; S.N. Soparkar, Sr. Advocate and Swati Soparkar, Advocate for the Respondent

Judgement

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K.S. Jhaveri, J.—This appeal u/s. 260A of the Income Tax Act, 1961 is filed against the judgment and order dated 25.02.2002 passed by the Income Tax Appellate Tribunal in ITA No. 5684/AHD/1994 & 5957/AHD/1994 whereby, both the appeals were partly allowed.

2. Briefly stated, the facts are that the assessee filed the original return of income on 28.12.1990 declaring total income at Rs. 1,80,72,380/-. Subsequently, a revised return of income was filed on 30.12.1991 declaring total income at Rs. 1,89,22,173/-. The returns were processed u/s. 143(1)(a) of the Act and Notices were issued and served upon the assessee. Assessment scrutiny was undertaken and ultimately, the Assessing Officer passed the order of assessment u/s. 143(3) of the Act on 30.03.1993.

3. Being aggrieved by the order of the Assessing Officer, appeal was preferred before the CIT(A). The CIT(A) partly allowed the appeal vide order dated 10.10.1994. Against the order of CIT(A), both the assessee as well as Revenue filed appeals before the Appellate Tribunal. After hearing both the sides, the Appellate Tribunal partly allowed both the appeals, vide impugned judgment and

order dated 25.02.2002. It is against this order of the Appellant Tribunal that the present appeal has been preferred.

4. This appeal was admitted on 25.02.2003 on the following substantial questions of law;

"(i) Whether in the facts and circumstances of the case, the Tribunal has committed an error and whether the Tribunal was right in allowing the deduction of Rs. 8,55,716/- in respect of the rent, repairs and depreciation and other expenses in respect of the guest house u/s. 37(4) of the Income Tax Act?

(ii) Whether in the facts and circumstances of the case, the Tribunal has erred in law and in fact in holding that the expenses to the tune of Rs. 44,87,308/- incurred in the issue of debentures could be allowed as revenue expenditure?"

5. We have heard learned counsel for both the sides. Insofar as question No. 1 is concerned, the same is already concluded by a decision of the Apex Court in the case of Britannia Industries Ltd. Vs. Commissioner of Income Tax, West Bengal, Kolkata and Another, wherein, it has been held that while the expression "premises and buildings" in sections 30 and 32 of the Income-tax Act, 1961 and the expression "residential accommodation including any accommodation in the nature of guest house" in sub-sections (3), (4) and (5) of section 37 can be similarly interpreted, a distinction has been sought to be introduced for the purpose of section 37 by specifying the nature of the building to be a guest house. The intention of the Legislature is clear and unambiguous: the intention was to excluded from deduction the expenses towards rents, repairs and also maintenance of premises/accommodation used for the purpose of a guest house of the nature indicated in subsection (4) of section 37. If the Legislature had intended that deduction would be allowable in respect of all types of buildings/accommodation used for the purpose of the business or profession, then the Legislature would not have felt the need to amend the provisions of section 37 so as to make a definite distinction with regard to buildings used as guest houses as defined in section 37(5) and the provisions of sections 31 and 32 would have been sufficient for that purpose. In view of the principle rendered in the above decision, we answer question No. 1 in favour of the Revenue and against the assessee.

5.1 Learned counsel for the Revenue was not in a position to controvert the proposition of law laid down in the above referred-case.

6. Insofar as question No. 2 is concerned, the same is also concluded by a decision of this Court passed in Tax Appeal No. 481/1999 & 482/1999 decided on 02.07.2009. The observations made in Paras ? 7 to 9 of the said decision are relevant and it reads as under;

"7. We heard learned Senior Counsel appearing for either side at length. Facts would clearly indicate that assessee company had issued convertible debentures of Rs. 125/- each of which Rs. 45/- each was to be converted into three shares

on 1.7.1983 during the assessment year 1984-85 and had incurred expenses to the tune of Rs. 19,00,925/-. According to the assessee, the expenses incurred are in respect of issuance of convertible debentures. Facts would further clearly indicate that major portion of the convertible debentures was converted into equity shares, and thereby assessing company had got enduring benefit. Debenture under the Company law means a document which either creates or acknowledges a debt. Debentures, wholly secured or unsecured are also used as convertible debentures with the option of being subsequently converted into shares. Share is a right to a special amount of the Share Capital of a company. Capital can be raised by converting debentures into equity shares. Expenditure incurred by the assessee on conversion of convertible debentures into equity shares would have to be treated as capital expenditure. Normally, in a company there are two kinds of share capital; preferential share capital and equity share capital. Generally, all share capital not falling within the description of preference capital is equity capital. Equity share capital is that part of share capital which confers a right either to the whole or part of any residue of any profits or to the whole or part of any residue of any assets remaining for distribution after satisfying the claims of any other shareholders whose right to participate therein is limited. Equity share-holders are owners of the company, sharing its risks, profits, and losses and having a residual claim on the earnings and assets of a company and are paid their share of the company's profit after all other claims are met, and in the event of liquidation of the company, they share whatever is left of the company after all its creditors have been paid. They enjoy limited liability i.e. liability only to the extent of their share-holding and they are only entitled to vote at the company's meetings, thus controlling the management. If the company prospers, it is the equity shareholder who is the greatest gainer. Therefore, in our view, when the debentures are converted into equity shares, the assessing company has already got enduring benefit and the expenditure incurred by the conversion of equity shares has to be treated as capital expenditure.

8. Apex Court in *India Cements Ltd. vs. CIT, Madras* (supra), held that the loan obtained is not an asset or advantage of an enduring nature, but obtaining capital by issuance of shares is different from obtaining loan by debentures. Above referred judgment was followed by the Apex Court in *Brooke Bond India Ltd. vs. CIT* (supra) and took the view that expenditure incurred by the company in connection with issue of shares with a view to increase its share capital, is directly related to the expansion of the capital base of the company, and is capital expenditure, even though it may incidentally help in the business of the company and in the profit-making.

9. In view of the above position, decisions cited by the learned counsel for the assessee have no application. Facts of the case clearly indicate that portion of the convertible debenture was converted into equity shares and assessee company had got enduring benefits and therefore, the expenditure incurred by the assessee on conversion of convertible debentures into equity shares has to

be treated as capital expenditure. It may be noted that the Assessing Authority disallowed expenditure only to the extent pertaining to the convertible portion of the expenditure which formed part of the capital. As such disallowance made by the Income Tax Officer, which was confirmed by the Commissioner (Appeals) has to be sustained. The question of law raised by the Revenue, though not happily framed, is accordingly answered in the negative in favour of the Revenue and against the Assessee. Consequently, appeals are allowed and the order of the Tribunal is set aside."

6.1 At this stage, it is reported by learned Senior Counsel Mr. Soparkar that the aforesaid decision of this Court has not been carried in appeal before the Apex Court yet. Considering the facts of the case, we concur with the view taken by the coordinate Bench of this Court in the above-referred decision and accordingly, we answer question No. 2 in favour of the assessee and against the Revenue.

7. Since we are concurring with the view taken in the above decisions, we are not assigning elaborate reasons while disposing off this appeal. Consequently, the appeal stands disposed of accordingly.