
(2013) 04 MP CK 0120

In the Madhya Pradesh High Court

Case No : Income Tax A. No. 238 of 2012

Bharat Oman Refineries Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 29-04-2013

Acts Referred:

Income Tax Act, 1961 — Section 143(3)

Citation : (2013) ILR (MP) 3024 : (2013) 356 ITR 399 : (2013) 218 TAXMAN 282

Hon'ble Judges : Krishn Kumar Lahoti, Acting C.J.; M.A. Siddiqui, J

Bench : Division Bench

Advocate : G.N. Purohit, with Abhishek Oswal, for the Appellant; Sanjay Lal, for the Respondent

Judgement

1. Shri G.N. Purohit, learned senior advocate with Shri Abhishek Oswal, counsel for the appellant. Shri Sanjay Lal, counsel for the respondent.

2. This appeal is directed against an order dated July 30, 2012, passed by the income tax Appellate Tribunal, Indore Bench, Indore, in I.T.A. No. 2/Ind/2012 (the assessment year 2008-09), by which an appeal preferred by the appellant was dismissed and the order passed by the Commissioner of income tax (Appeals), Bhopal, dated October 3, 2011, was affirmed. The income tax Appellate Tribunal and the Commissioner of income tax have confirmed the addition of Rs. 31,39,70,137 to the total income on account of the interest earned on FDRs made out of zero coupon convertible bonds. The appellant has suggested that the appeal involves the following substantial questions of law and on these substantial questions of law, this appeal may be admitted:

(i) Whether the Tribunal is correct in law in basing its finding on erroneous finding of the Assessing Officer about the nexus of funds invested in FDR, and holding that interest which accrued on equity funds deployed with the bank could be taxed as income from other sources and not as a capital receipt liable to be set off against preoperative expenses?

(ii) Whether the Tribunal was correct in law in holding that the interest earned by the assessee by short-term investment of zero coupon debentures funds is liable to income tax as income from other sources?

3. The facts necessary to consider this appeal and in respect of involvement of the aforesaid substantial questions of law are thus:

(i) The appellant is a joint venture company constituted by the Bharat Petroleum Corporation Ltd. (in short "the BPCL"), a Government of India undertaking and Oman Oil Co., incorporated on February 26, 1994, with a equal contribution of equity. It established its refinery at Agasod, Bina, District Sagar (M.P.)

(ii) That, as per the approval granted by the Government of India, the share of BPCL was restricted to 50 percent of the equity. For raising funds from banks and financial institutions, a debt equity ratio was fixed as 1.6 : 1. The initial equity capital of BPCL and Oman Oil Co. Ltd. was Rs. 151 crores.

(iii) That, to satisfy the debt equity ratio of 1.6 :1 for raising a loan of Rs. 1350.31 crores, the company was required an additional equity due to embargo of 50 percent imposed by the Government of India and there being no progress in work for quite sometime, Oman Oil withdrew itself for arranging fresh capital.

(iv) As per the appellant, the BPCL had introduced Rs. 900 crores in the form of zero coupon convertible debentures to be converted into equity shares within a span of 36 months. The total sum of Rs. 900 crores was received on March 9, 2007, out of which a sum of Rs. 500 crores was invested in short-term deposits with the State Bank of Patiala and ICICI Bank. This amount was subsequently re-vested in short-term deposits with the State Bank of Patiala, Jammu and Kashmir Bank and Central Bank of India. On these fixed term deposits, with various banks for short period, the company had earned an interest at Rs. 31,39,70,136.99.

(v) The appellant had submitted its return of income for the assessment year 2008-09 (financial year 2007-08) on August 25, 2008. In the said return, the appellant had shown a total income of Rs. 43,91,84,655 being interest earned on fixed deposits made out of borrowed funds and claimed that the sum of Rs. 31,39,70,136.99 was taxable as income from business being as accretion to the capital of the appellant. The Assessing Officer, the Deputy Commissioner of income tax-1(2), Bhopal, framed the assessment order u/s 143(3) of the income tax Act, 1961, on December 30, 2010. The Assessing Officer had not accepted the contention of the appellant regarding accretion in capital and treated the sum of Rs. 31,39,70,136.99, the interest earned on non-interest bearing fund as income from other sources and found it taxable. Against the order of the Assessing Officer, the appellant herein preferred an appeal before the Commissioner of income tax (Appeals), Bhopal, which was dismissed. Second appeal was also preferred before the income tax Appellate Tribunal but that was also dismissed. These orders have given the appellant a cause for filing this appeal.

4. The main contention of the appellant before this court is that aforesaid amount was zero coupon money and was parked with the banks and the interest earned on the amount was not liable to income tax as income from other sources, but the interest could have been treated as income from the business and could have been assessed because it will reduce the cost of construction of the industries and thereby will reduce the capital invested by the appellant. Apart from this, the amount of Rs. 500 crores was parked with the bank to satisfy the debt equity ratio as was necessary to be maintained as per the condition imposed by the bank. Reliance is placed to a judgment of the Madras High Court in Commissioner of Income Tax Vs. VGR Foundations, and submitted that in view of the law laid down in paragraph 5 of the judgment, this appeal may be admitted for final hearing.

5. Shri Sanjay Lal, learned counsel appearing for Revenue, opposed the aforesaid contention and submitted that the controversy involved in this case is squarely covered by a judgment of the apex court in Tuticorin Alkali Chemicals and Fertilizers Ltd., Madras Vs. Commissioner of Income Tax, Madras, and a Division Bench judgment of this court in MADHYA PRADESH STATE INDUSTRIES CORPORATION LTD. Vs. COMMISSIONER OF Income Tax, M.P., and submitted that this appeal does not involve any substantial question of law as suggested by the appellant.

6. Per contra, Shri Purohit, learned senior advocate submitted that there are divergent views of the Supreme Court as find place in Commissioner of Income Tax Vs. Karnal Co-operative Sugar Mills Ltd., , Commissioner of Income Tax Bihar-II Patna Vs. Bokaro Steel Limited, Bokaro, and Commissioner of Income Tax, Karnataka Vs. M/s. Karnataka Power Corporation, , so this appeal may be admitted on the aforesaid substantial questions of law. In reply to it, Shri Lal, learned counsel for the Revenue, submitted that recently a Division Bench of the High Court of Bombay have considered all the aforesaid judgments in Shree Krishna Polyster Ltd. Vs. Deputy Commissioner of Income Tax, and relying on the judgment in Tuticorin Alkali Chemicals and Fertilizers Ltd., Madras Vs. Commissioner of Income Tax, Madras, held that such interest can be treated as an income from other sources and was not a business income.

7. We have considered the rival contentions of the parties and find that in Tuticorin Alkali Chemicals and Fertilizers Ltd., Madras Vs. Commissioner of Income Tax, Madras, , the apex court considering the legal position held that the interest earned by the assessee before commencement of business on short-term deposits with banks, even out of term loans secured from financial institutions, is an income chargeable under the head "Income from other sources" and would not go to reduce the interest payable by the assessee which would be capitalised after the commencement of commercial production. The apex court have held that it was an income from other sources and shall be liable to be taxed accordingly. The Division Bench of this court considering a similar controversy in MADHYA PRADESH STATE INDUSTRIES CORPORATION LTD. Vs.

COMMISSIONER OF Income Tax, M.P., held that the interest earned by investing the surplus share money in bank deposits, such interest is taxable as income from other sources and not as business income. The Division Bench of the Bombay High Court in Shree Krishna Polyster Ltd. Vs. Deputy Commissioner of Income Tax, have also considered the legal position and held that the interest on short-term deposits with the bank by investing surplus fund acquired in public issue invested in short-term bank deposits did not spring or emanate from the business activity of the assessee, hence, it cannot be considered as business income and is liable as income from other sources. The Bombay High Court considered all the judgments including the judgment in Tuticorin Alkali Chemicals and Fertilizers Ltd., Madras Vs. Commissioner of Income Tax, Madras, a Division Bench's judgment of this court in MADHYA PRADESH STATE INDUSTRIES CORPORATION LTD. Vs. COMMISSIONER OF Income Tax, M.P., and held that such income is an income from other sources and cannot be treated as an income from business and held that the said interest is liable to be taxed.

8. As the Division Bench of this court have considered this question in MADHYA PRADESH STATE INDUSTRIES CORPORATION LTD. Vs. COMMISSIONER OF Income Tax, M.P., and have decided the question, we do not find any reason to differ with the aforesaid. So we find that this appeal does not involve aforesaid substantial questions of law for our consideration and accordingly we dismiss this appeal at the admission stage. At this stage, Shri G.N. Purohit, learned senior counsel submitted that the appellant may be granted leave to file an SLP before the apex court, but considering the fact that the controversy is squarely covered by the judgment of the apex court in Tuticorin Alkali Chemicals and Fertilizers Ltd., Madras Vs. Commissioner of Income Tax, Madras, and MADHYA PRADESH STATE INDUSTRIES CORPORATION LTD. Vs. COMMISSIONER OF Income Tax, M.P.,) of the Division Bench of this court, we do not find that it is a fit case for filing an SLP before the apex court. The prayer made by the appellant is rejected.