(2014) 04 DEL CK 0159

In the Delhi High Court

Case No : ITA 234/2013

CIT APPELLANT

Vs

Modi Entertainment Ltd. RESPONDENT

Date of Decision : 15-04-2014

Acts Referred:

Income Tax Act, 1961 — Section 14A, 36(1)(iii)

Citation : (2014) 04 DEL CK 0159

Hon'ble Judges : S. Ravindra Bhat, J;R.V. Easwar, J

Bench : Division Bench

Advocate : Sanjeev Sabharwal, Sr. Standing Counsel, Advocate for the Appellant; Ajay Vohra, Ms. Kavita Jha and Ms. Bhoomika Choudhury, Advocate for the Respondent

Judgement

R.V. Easwar, J.—The following question of law was framed on 25.3.2014:-

Whether the Tribunal fell into error in setting aside the disallowance u/s 36(1)(iii) of the Income Tax Act, 1961 to the tune of Rs. 31,39,988/- in the circumstances of the case?

Against the assessment to income tax made for the assessment year 2001-02 by order dated 23.2.2004, the assessee filed an appeal which went up to the Income Tax Appellate Tribunal. The Tribunal set aside the assessment on two issues:

(1) disallowance of interest u/s 14A and

(2) disallowance of interest u/s 36(1)(iii),

and remanded the matter to the AO for fresh decision in the light of the judgments of this Court in The Commissioner of Income Tax, Central-II Vs. Orissa Cement Ltd., and Elmer Havell Electrics and Others Vs. Commissioner of Income Tax and Another, . In the fresh assessment made, the AO disallowed interest of Rs. 51,33,108/- u/s 14A and Rs. 37,58,496/- u/s 36(1)(iii). So far as the disallowance u/s 14A is concerned, it was made on the footing that the loan of Rs. 13.06 cores taken from Hong Kong Bank at 12.75% interest was invested in shares of Rs. 4.56 cores on which tax-free dividend of Rs. 2.15 cores was earned. The disallowance u/s 36(1)(iii) was made on the ground that the assessee had given interest-free advances to its subsidiaries and two holding companies out of interest-bearing funds, which were not for the purposes of the business and to that extent the assessee was not entitled to the deduction. These disallowances were confirmed by the CIT(Appeals) and in further appeal the Tribunal in its order dated 15.3.2012 held, so far as disallowance u/s 14A is concerned, that though the disallowance was justified in principle, but since the investment in the shares was made only on the last day of the accounting year i.e. on 31.3.2001, the disallowance should be restricted proportionately for one day only. So far as the disallowance u/s 36(1)(iii) is concerned, the Tribunal held that out of the interest of Rs. 92,61,100, interest amounting to Rs. 61,20,261/- was clearly allowable since it represented interest paid on bank overdraft, to suppliers for delayed payment and on security deposit taken from depositors. This left a balance of Rs. 31,40,839/- (written in the orders as Rs. 31,39,988/-). In respect of this amount the Tribunal found that the interest-bearing funds were advanced to the subsidiary companies without interest but since the subsidiary companies were under the same management and were engaged in similar business of entertainment/distribution of pay channels, the interest-free advances must be taken to have been given as part of the corporate or business strategy for expanding the business operations of the assessee through the subsidiaries. It accordingly directed allowance of the interest of Rs. 31,39,988/-.

2. According to the Tribunal, advancing of such monies to the subsidiaries was driven by commercial expediency. In support of this view the Tribunal relied upon the following judgments:

(1) S.A. Builders Ltd. Vs. Commissioner of Income Tax (Appeals), Chandigarh and Another,

(2) CIT V. Dalmia Cement (P) Ltd.: 254 ITR 37(Del.)

(3) Commisioner of Income Tax Vs. Bharti Televenture Ltd.,

3. u/s 36(1)(iii) the following conditions are required to be satisfied before the assessee can successfully claim deduction in respect of interest paid:

(a) The assessee should have borrowed capital;

(b) The borrowing of the capital should be for the purpose of the business and

(c) Interest should have been paid on the borrowing.

The finding of the Tribunal, applying the judgments of the Supreme Court and of this Court, is that the advancing of interest-free monies to the subsidiary companies was driven by business considerations since the subsidiaries were also engaged in the same business in which the assessee was engaged. The Tribunal accordingly held that it would be in the interest of business of the assessee and certainly would be commercially expedient for the assessee to advance interest-free monies to the subsidiaries as part of the corporate business strategy to expand its business operations through its subsidiaries. This finding of fact has not been disputed. If that is so we do not see how the decision of the Tribunal can be faulted.

The question of law is accordingly answered in the negative, in favour of the assessee and against the revenue with no order as to costs.

The appeal is accordingly dismissed.

