(2013) 02 GUJ CK 0012

In the Gujarat High Court

Case No : Tax Appeal No. 586 of 2012

CIT APPELLANT

Vs

R.L. Kalthia Engineering and Automobiles (P.) Ltd. RESPONDENT

Date of Decision : 05-02-2013

Acts Referred:

Citation : (2013) 02 GUJ CK 0012

Hon'ble Judges : Sonia Gokani, J;Akil Kureshi, J

Bench : Division Bench

Advocate : Varun K. Patel, for the Appellant;

Judgement

1. Following substantial question of law is proposed for our consideration in the present Tax Appeal, which arises from the decision of the Income Tax Appellate Tribunal (''Tribunal'' for short) dt. 2-3-2012:

Whether in the facts and circumstances of the case, the learned ITAT has erred in law in confirming the order of Commissioner (Appeals) deleting the addition of 28,68,776 on account of interest claimed by the Assessee u/s 36(1)(iii) of the Act?

Heard learned advocate Mr. Varun K. Patel appearing for the Revenue. It emerges from the record that the assessee-company in its return of income filed on 31-10-2005 for the A.Y. 2005-06 declared total income as ''NIL'' after setting off the brought forward losses. In scrutiny assessment, the assessing officer had made various additions, one of which was disallowances of Rs. 28,68,776 on account of interest u/s 36(1)(iii) of the Income Tax Act, 1961 (''Act'' for short).

2. Such disallowances were made by the assessing officer on the ground that the assessee, on one hand, had borrowed the capital for the purpose of business and such borrowed fund is expected to be used in the business. The interest paid on such borrowings being an expenditure, the same is required to be deducted in computation of income from the business. Noting that the interest payable on the capital borrowed since is a liability till it is repaid, such interest is allowable under

proviso to section 36(1)(iii) of the Act. On noticing that there was substantial diversion by the assessee of such interest bearing funds towards interest free loans and advances, and towards non-business investment, the total amount held to be diverted for the purpose of investment in the shares and loans to the sister-concern to the tune of Rs. 1,59,37,432 calculating interest @ 18% per annum, the amount of Rs. 28,68,776 was disallowed.

3. Aggrieved by such disallowance of interest amount u/s 36(1)(iii) of the Act, challenge was made before the Commissioner (Appeals) by the assessee-respondent. On noticing that in case of a sister-concern of the respondent-company where similar disallowances were made, that the same had been deleted by the Commissioner (Appeals) vide order dt. 30-11-2007, in the instant case also, the Commissioner (Appeals) set-aside such disallowances by holding that the assessee-respondent had not diverted interest bearing fund as no nexus was established between the borrowed funds and the funds lent and investment.

4. When challenged before the Tribunal by the revenue, it concurred with the findings of the Commissioner (Appeals). It also noticed that the total interest-free funds available with the respondent was to the tune of Rs. 1.74 Crores and the advances and investments made were at Rs. 1.59 Crores. The Tribunal also followed the treatment given to such issue of disallowance of interest in case of sister-concern and not having found any nexus in the instant case between the borrowed funds and the funds lent, as also registering the availability of the huge amount of interest-free funds to the tune of Rs. 1.74 Crores, upheld the decision of the Commissioner (Appeals) of reversing the decision of the assessing officer on this count. It is well established proposition that when the Revenue fails to establish any nexus between the borrowed funds and the funds diverted/lent, any denial of allowances of interest u/s 36(1)(iii) is not permissible. In the instant case, as both the authorities have held concurrently on the basis of material available that sufficient amount of interest-free funds were available with the assessee-respondent and therefore also, there is no justification in interfering with the decision of both these authorities. Resultantly, the question of law proposed is answered accordingly.

