

(2008) 01 GUJ CK 0077

In the Gujarat High Court

Case No : Tax Appeal No's. 1519 and 1520 of 2007

Commissioner of Income Tax

APPELLANT

Vs

Amola Holdings (P.) Ltd.

RESPONDENT

Date of Decision : 15-01-2008

Acts Referred:

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

Citation : (2011) 197 TAXMAN 18

Hon'ble Judges : Y.R. Meena, C.J.; J.C. Upadhyaya, J

Bench : Division Bench

Advocate : Manish R. Bhatt, for the Appellant;

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the appellant. The following substantial question of law is proposed for admission of these appeals:

Whether the Appellate Tribunal is right in law and on facts in confirming the order passed by the Commissioner of income tax (Appeals) deleting the disallowance of interest which was made by the Assessing Officer u/s 36(1)(iii) on the ground that the purchase of shares was mainly for acquiring controlling rights in another company?

2. The Tribunal has considered the issue raised in the question as under:

5. The brief facts of the case are that the impugned sum stood disallowed out of the assessee's claim of interest at a total amount of Rs. 789.58 lakhs, on account of utilization of borrowed capital for investment in the shares in Nachmo Knitex Ltd. and Ashima Syntex Ltd., as well as in the partly convertible debentures of three other companies, who, it was claimed had, in turn, invested the same in the shares in the aforesaid two companies. The Revenue's case, therefore, is one of investment in a capital asset for acquiring controlling rights, so that the resultant expenditure is a capital expenditure. The Assessing Officer (AO) made the addition following the similar disallowance made in the

assessment year 1996-97, finding no difference in the facts and circumstances of the present case. The assessee's case for 1996-97 has since been decided by the Tribunal in its favour, vide the aforesaid order, on the basis that the assessee-company by the purchase of shares and convertible debentures (supra), was not making any capital investment for the purpose of requiring controlling rights, but only engaging in the business of purchase and sale of shares, so that the ratio of the decision in the case of Sarabhai Sons (P.) Ltd. Vs. Commissioner of Income Tax, , being relied upon by the Revenue, would not apply.

3. The relevant findings and conclusion of the Tribunal are reproduced as under for the sake of ready reference:

9. We have considered the rival submissions, facts and circumstances of the case and decisions relied upon by the parties. 10. First of all, we are of the opinion that the first question for our decision is, as to whether, on the facts and in the circumstances of the case, the assessee could be said to have been carrying on the business of sale/purchase of shares or not, because it is found to have been carrying on the business of sale/purchase of shares, then the facts and circumstances of the case will be the same as in the case of Akalu Holdings, and assessee's case will be covered in favour of the assessee and against the Revenue by the decision of the Tribunal in the case of Akalu Holdings Pvt. Ltd. and Ataku Holdings P. Ltd. (supra). To find the answer to this question, the assessee was required to place copies of the memorandum of association and articles of association on record which was submitted at the Bench itself and has been considered.

10.1 From the copy of the memorandum of association and articles of association of Amola Holdings Pvt. Ltd. the assessee; it is noticed that first of the main object of the company to be pursued on its corporation reads as under:

"(1) To subscribe for, take, acquire, and hold sell and exchange shares, debentures, debentures-stocks, bonds, obligations or securities of any kind or authority, supreme, municipal, local or otherwise or any company or body corporate or incorporated or association or society and to guarantee the subscription thereof and to exercise and on force all rights and powers conferred by or incidental to the ownership or holding thereof."

10.2 From the aforesaid, the first main object of the company, we have no hesitation to hold that the assessee-company's main object was to carry on the business of sale/purchase of shares, debentures, stocks, bonds, etc.

11.1 So far as actual carrying on the business of sale/purchase of shares by the assessee-company during the assessment year 1996-97 is concerned, it is noticed from paragraph 4.3 of the order of the Commissioner of income tax (Appeals), where the assessee's submissions have been reproduced, that the assessee had purchased shares during the period, relevant to the assessment years 1995-96, 1996-97 and 1997-98 and had sold some of the shares during the period relevant to the assessment year 1997-98 as detailed below:

(i) Purchased shares of Ashima Syntex Ltd. (61,17,025 equity shares of Ashima Syntex Ltd.) fully paid up from the open market, during the period January to March, 1995 for Rs. 4,17,16,069.

(ii) Purchased optional convertible debentures during the period relevant to the assessment year 1996-97 worth Rs. 5,36,53,000.

(iii) Purchased 20,000 fully paid up equity shares of Nachmo Knitex Ltd. from open market during the period relevant to the assessment year 1996-97 for Rs. 10,67,025.

(iv) Sold 800 equity shares of Nachmo Knitex Ltd. in open market through broker in May, 1996, i.e., relevant to the assessment year 1997-98 for Rs. 4,15,200.

11.2 In view of above facts and circumstances, we are of the opinion that objection raised by the learned Departmental representative that facts of the present assessee were different from the facts and circumstances in the case of Akalu Holdings (P) Ltd., because the present assessee was not carrying on the business of sale/purchase of shares and securities is devoid of any merit. In other words, the assessee is found to have been carrying on the main business in sale/purchase of shares and debentures from the market itself and that being the case, we are further of the opinion that the issue involved in this case, we are further of the opinion that the issue involved in this case is squarely covered in favour of the assessee and against the Revenue by the decision of the Tribunal in the case of Akalu Holdings Pvt. Ltd. in I. T. A. No. 2329/Ahd/2000, dated November 9, 2005 and the relevant part as contained in para 3 to 7 of that Tribunal's order has already been reproduced by us in foregoing paras 7.3 of this order.

11.3 Respectfully following the decision of the Tribunal in the case of Akalu Holdings Pvt. Ltd. (supra), we confirm the order of the Commissioner of income tax (Appeals) in deleting the addition of Rs. 1,24,96,574.

11.4 On the merits, in view of the fact that the assessee had only 2.53 per cent. to 3 per cent. shares of Ashima Syntex Ltd. could not have any reason to acquire the control over the business of Ashima Syntex Ltd. Further, it is not the Revenue's case that the assessee had purchased shares/optional debentures of associate concerns to acquire its own interest. The Revenue's case is that acquisition of shares of optional debentures by the assessee was to hold its associate-concerns and their directors to acquire control over Ashima Syntex Ltd., but that fact cannot be relevant for considering the utilization of borrowings by the assessee for non-business purpose.

12. In view of the above facts and circumstances that the decision of the hon'ble Gujarat High Court in the case of Sarabhai Sons (P.) Ltd. Vs. Commissioner of Income Tax, wherein the hon'ble High Court has held that when the shares which are acquired not for the purpose of earning the income, but only with the purpose of acquiring the controlling rights over another company, the interest on

the borrowed funds cannot be treated as per the business purpose of the assessee-company and was not allowable and relied upon by the Assessing Officer, is not applicable to the present case, because of distinguishable facts and circumstances.

12.1 In view of the above facts and circumstances of the case, we are of the opinion that on the merits also, the assessee was entitled to deduction of interest paid on borrowings utilized for earning interest and for purchase of shares to earn the dividend and for purchase of optional debentures to earn the interest.

12.2 In view of the totality of the facts and circumstances of the case, we do not find any infirmity in the order of the Commissioner of income tax (Appeals), which is confirmed.

"5. The factual findings having not rebutted by the learned Departmental representative, the Assessing Officer himself basing the Revenue's case on the assessee's assessment for the assessment year 1996-97, we have no hesitation in dismissing the Revenue's appeal by following the decision by the co-ordinate Bench of the Tribunal in the assessee's own case for the assessment year 1996-97. We decide accordingly.

4. The Commissioner of income tax (Appeals) as well as the Tribunal both found that the shares were purchased not for acquiring the controlling rights in another company, but the shares were purchased for non-business purpose, especially, for earning interest and dividend.

5. Considering the concurrent findings of the Commissioner of income tax (Appeals) and the Tribunal, we see no justification to interfere with the impugned order. Both appeals stand dismissed at the admission stage.