(2010) 08 GUJ CK 0061

In the Gujarat High Court

Case No : Tax Appeal No. 1709 of 2008 (A.Y. 1996-97)

Commissioner of Income Tax APPELLANT

Vs

Deepak Nitrite Ltd. RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:
Income Tax Act, 1961 — Section 28, 36(1)

Citation : (2010) 08 GUJ CK 0061

Hon'ble Judges : H.N. Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Mauna M. Bhatt, for the Appellant; Manish J. Shah, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Devani, J.—Vide order dated 30-9-2009, the appeal had been admitted on the following substantial questions:

(A) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in confirming the order of the Commissioner (Appeals) whereby he allowed Assessees claim of interest expenditure amounting to Rs. 93,04,718 on the funds borrowed for setting up a new unit Taloja Chemical Division at Taloja despite the fact that Assessee established altogether a new unit or division itself ?

(B) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in confirming the order of the Commissioner (Appeals) whereby he allowed Assessees claim of Rs. 44,30,000 being 2/3rd of Rs. 67,44,000 on account of contribution to GIDC for common effluent treatment plant despite the fact that the Assessee itself accepted that the expenditure incurred had been over the future years ?

2. The assessment year is 1996-97 and the relevant accounting period is the year ended on 31-3-1996.

3. In relation to question No. A, the Assessee had claimed interest expenditure on the funds borrowed for setting up a new unit called Taloja Chemical Division, at Taloja, the production of which had commenced only in the month of March, 1996. The assessing officer treated the same as capital expenditure and disallowed the same. The Assessee carried the matter in appeal before Commissioner (Appeals) who deleted the addition. Revenue carried the matter in appeal before the Tribunal, but did not succeed.

4. The Assessee in the year under consideration had commissioned a new unit called Taloja Chemical Division, which started production during the month of March, 1996. The unit had been set up at Taloja for the production of the products called OT, PT, MT etc. The Assessee claimed deduction of interest amounting to Rs. 1,52,74,414, out of which a sum of Rs. 93,74,715 was in relation to interest on borrowed funds prior to the date of commissioning of the Taloja unit. The assessing officer called upon the Assessee to show cause as to why the entire amount of interest pertaining to the period prior to commissioning of the new unit should not be treated as capital expenditure instead of revenue expenditure as claimed by the Assessee. The Assessee in its reply stated that it was manufacturing ONCB, PNCB, ONT, PNT and MNT at its Nitro Aromatics Plant at Nandesari. Since the company was facing very stiff competition for marketing its products as a number of manufacturers were producing these products, it went for value added products out of the abovesaid products. Since the Assessee did not have any manufacturing facility, it got these products converted into OCA, PCA, to PT and MT from outside parties on job work basis. However, as the finished goods were not of required standards, the Assessee went in for an expansion to set up a new unit for which the company adopted the process of hydrogenisation by using hydrogen gas instead of hydrochloric acid or iron ore being used by the parties from whom it was procuring the concerned items on job work basis. Since the hydrogen was not available near its Nitro Aromatics Plant, the company had to go to the source of hydrogen at Taloja. It was, accordingly, contended that it was an expansion of its already existing business, hence, the entire interest of Rs. 93,04,715 incurred during the construction period of the said project should be allowed as revenue expenditure u/s 36(1)(iii) of the Act. The assessing officer held that the interest on borrowings made by the Assessee for setting up of the new unit is in the nature of capital expenditure till the date the Assessee starts its business. The Assessee cannot give different treatment to the same expenditure, one for the purpose of its book results and other for the purpose of taxation. He, accordingly, disallowed the claim towards interest expenses of Rs. 93,04,715.

5. In appeal before Commissioner (Appeals), it was submitted on behalf of Assessee that u/s 36(1)(iii) of the Income Tax Act, 1961 (the Act), the expenditure by way of interest on capital borrowed for the purpose of business has to be allowed and the distinction between revenue and capital is not relevant. It was further contended that the fact that in the books of account, the interest had been capitalized, would not be a bar to claiming deduction from

business income.

6. Commissioner (Appeals) noted that in relation to assessment year 1995-96, the issue had been considered in detail and the matter had been evaluated on the facts of the case to ascertain as to whether the expansion into Aromatics Division was part of the business carried on by the company wherein it had been found that the Assessee was already manufacturing PNCB, ONCB, PNT and ONT. The Nitro Aromatics Division, at Nandesari in Baroda, was already selling these items. The downstream products from these items were to be manufactured at the new factory at Taloja. This was mainly because hydrogen gas was available nearby from the plants of Deepak Fertilizers & Petrochemicals Corporation. The same products were more profitably exploited in the new factory due to availability of hydrogen gas close by, and merely because the plant was set up at a different place, it did not mean that it was a different business. Commissioner (Appeals) in relation to assessment year 1995-96, was of the view that since the downstream products were already being manufactured and sold by the company and these are now further improved and sold from the Taloja plant, the borrowings for the plant in question pertain to the same business and interest thereon was required to be fully allowed in as much as the same has been incurred in relation to expansion of the same business. That it was irrelevant as to the treatment given to the expenditure in the books of account. If the claim was allowable as revenue expenditure then its treatment in the books of account would not be a bar to the claim as held by the jurisdictional High Court in the case of Deputy Commissioner of Income Tax Vs. Core Healthcare Ltd., In the light of the order made in the case of the Assessee in relation to assessment year 1995-96, Commissioner (Appeals) held that, for the year under consideration also, the interest and financial charges on term loan were fully allowable as business expenditure and deleted the addition.

7. The Tribunal, in the impugned order, has recorded that the manufacturing facility set up by the Assessee was towards substitution, through own production, of a product which was being procured through job work from outside parties, in the circumstances, the same would not constitute the setting up or commencement of a new business. The Tribunal was, accordingly, of the view that the decision of the jurisdictional High Court in the case of Dy. CIT v. Core Healthcare Ltd. (supra) would be fully applicable to the facts of the present case and consequently, the Assessee was entitled to claim deduction of interest u/s 36(1)(iii) of the Act.

8. Thus, both Commissioner (Appeals) as well as the Tribunal, have recorded concurrent findings of fact to the effect that the new unit set up by the Assessee was an expansion of its existing business and that the same did not constitute the setting up or commencement of a new business. After recording concurrent findings of fact as noted hereinabove, the Tribunal has found that the decision of the jurisdictional High Court in the case of Dy. CIT v. Core Healthcare Ltd. (supra) was squarely applicable to the facts of the present case. On behalf of the

revenue, nothing has been pointed out to indicate that the findings of fact recorded by the Tribunal are contrary to the evidence on record or that the Tribunal has taken into consideration any irrelevant material or that any relevant material has been ignored. Nothing has been pointed out to indicate any evidence to the contrary. In the case of Dy. CIT v. Core Healthcare Ltd. (supra) this Court had inter alia held that Section 36(1)(iii) of the Act, provides that the amount of interest paid in respect of capital borrowed for the purposes of business shall be allowed in computing the income referred to in Section 28 of the Act. It is settled legal position that interest paid/payable has to be in respect of capital borrowed for the purposes of the business; the section nowhere stipulates that such borrowing has to be only on revenue account. The only requirement is that the interest must have been incurred for the purpose of capital borrowings made for the purpose of business. The said decision of this High Court came to be confirmed by the Supreme Court in Deputy Commissioner of Income Tax, Ahmedabad Vs. Core Health Care Ltd., wherein it has been held that the legislature has made no distinction in Section 36(1)(iii) between "capital borrowed for a revenue purpose" and "capital borrowed for a capital purpose". An Assessee is entitled to claim interest paid on borrowed capital provided that capital is used for business irrespective of what may be the result of using the capital which the Assessee has borrowed.

9. Examining the facts of the present case in the light of the above-referred decisions, it cannot be stated that the Tribunal has committed any legal error so as to warrant interference.

10. In the circumstances, question (A) is answered in the affirmative, that is, in favour of the Assessee and against the revenue. The Tribunal was right in law in holding that interest expenditure amounting to Rs. 93,04,718 on the funds borrowed for setting up a new unit Taloja Chemical Division at Taloja was allowable.

11. As regards question (B), it is an accepted position that the said issue stands concluded by an earlier decision of this High Court in CIT v. Synpol Products Ltd., rendered on 9-9-2008 made in Tax Appeal No. 621 of 2008, wherein the Court, following its decision in CIT v. Deversons Industries Ltd. rendered on 24-8-2007 in Tax Appeal No. 1392 of 2006, whereby the issue has been decided against the revenue, dismissed the appeal. In the circumstances, following the said decisions, question (B) is also answered in the affirmative, that is, in favour of the Assessee and against the revenue. The Tribunal was justified in holding that the amount of Rs. 51 lakhs paid by the Assessee towards contribution to common effluent treatment plant was an allowable revenue deduction.

12. In the light of the aforesaid, the appeal is dismissed with no orders as to costs.

