
(2010) 08 DEL CK 0185

In the Delhi High Court

Case No : IT Appeal No. 1007 of 2008 (Assessment Year 1997-98)

Commissioner of Income Tax

APPELLANT

Vs

Front Line Securities Ltd.

RESPONDENT

Date of Decision : 26-08-2010

Acts Referred:

Companies Act, 1956 — Section 18(1)(A)
Income Tax Act, 1961 — Section 73

Citation : (2010) 08 DEL CK 0185

Hon'ble Judges : Reva Khetrapal, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Prem Lata Bansal, for the Appellant; Vibhu Bhakru and Vikas Chandel, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—In the return filed by the Assessee for the asst. yr. 1997-98, the Assessee claimed loss of Rs. 98,03,600 on sale/purchase of shares. The question fell for consideration before the AO as to whether this loss was a business loss or speculative loss. According to the AO, the case of the Assessee falls within the provisions of Explanation to Section 73 of the IT Act (hereinafter referred to as the Act) and treating the said loss to be speculative in nature, the AO refused to give the adjustment against other business income. The Assessee had earned the income in different business activities, which included the consultancy income, lease interest income and other income, as against that, insofar as dealing in shares is concerned, the Assessee suffered losses, as mentioned above. Explanation to Section 73 of the Act stipulates that where any part of the business of a company consists in the purchase and sale of shares of other companies, such company shall, for the purposes of this section, be deemed to be carrying on a speculation business to the extent to which the business consists of the purchase and sale of such shares. Further, it is also provided in the said Explanation that it would not apply in two cases, firstly, in case a company other than a company whose gross total income consists mainly of

income which is chargeable under the heads "Interest on securities", "Income from house property", "Capital gains" and "Income from other sources", and secondly, in case of a company, the principal business of which is the business of banking and of the granting of loans and advances.

2. The Assessee had pleaded before the AO that the principal business of the Assessee was of granting of loans and advances and earning the income therefrom and therefore, the Explanation to Section 73 of the Act would not apply in the case of the Assessee. It is in this backdrop that the AO went into the question as to whether the principal business of the Assessee was that of lending money and earning the income therefrom. He concluded in the negative, i.e., he held that the principal business of the Assessee was not of moneylending. The detailed order passed by the AO, in this behalf, would reveal that the AO gave as many as five reasons in support of his aforesaid conclusion. Three reasons are predicated on the object clause contained in the memorandum of association of the Assessee as per which, moneylending was not one of the objects for which the Assessee company was incorporated. Fourth reason which is stated by the AO is that even if the company had passed resolution for carrying out business of moneylending for loans and advances and got the license from RBI, because no subsequent changes were made in the objects of the company, it could not be treated as principal business. Thus, these four reasons are based on the main object of the company as stated in the assessment order. It seems that the AO had perused memorandum and article of association prepared at the time of incorporation of the company and produced before him by the Assessee. Fact remains that within four months of its incorporation, the Assessee company had amended the memorandum of association. This amendment was carried out by passing specific resolution in the extraordinary general body meeting. On the basis of that resolution, certificate of registration u/s 18(1)(a) of the Companies Act was also issued by the RoC.

3. By this amendment, main objects which are added to the object clause categorically stipulate the objects of carrying on business of consultancy, rendering all kinds of consultancy and advisory services, consultants in the field of business, industrial productivity, management, administration, etc., to act as financial consultants, advisers to public issue, preparation of project reports. Thus, consultancy and money lending had become the main business of the company after the aforesaid amendment in the object clauses, which was carried out, as mentioned above within four months of its incorporation. In view thereof, the first four reasons given by the AO would lose their validity.

4. The fifth reason, which was given by the AO was that the interest income of the Assessee was only 27 per cent of its total income and therefore, it should not be treated as its main business.

5. The CIT(A) revisited this issue in much greater details. The contention of the Assessee in the appeal filed before the CIT(A) was that the AO had not taken into consideration the important aspect, viz., the consultancy income was from the

business of lending loans and advances and therefore, it was from the business of granting of loans and advances. It was also pointed out that the other income was accrued/earned from bill discounting charges in the nature of granting loans and advances. The case which was set up by the Assessee before the CIT(A) was that all the three incomes, i.e., the interest income, consultancy income as well as income from bill discounting were to come under one head, viz., "income from business of granting of loans and advances" and thus, where these three incomes were taken together, it constituted 52 per cent of the total income. It was also submitted that even the lease rentals were in the nature of lending money and the income from this source amounts to 20.99 per cent of the total income of the Assessee from which 28.99 per cent income was accrued to the Assessee's income. On this basis, the argument of the learned Counsel for the Assessee was that the principal business of the Assessee was that of moneylending and therefore, Explanation to Section 73 of the Act would not apply.

6. The CIT(A) after discussing the above aspect in detail and relying upon the judgment of the Supreme Court in the case of *K.P. Varghese v. ITO and Anr.* (1981) 131 UK 597 (SC) concluded that the principal business of the Assessee was that of moneylending and allowed the adjustment of losses suffered on account of sale/purchase of shares from other business income.

7. The income tax Appellate Tribunal (in short the Tribunal) has accepted the aforesaid reasoning of the CIT(A) in its impugned order. The relevant discussion contained in the Tribunal's order reads as under:

6. On the other hand, the learned Counsel for the Assessee explained the provisions of Section 73 including exception clauses of Explanation to Section 73. Then he took the Bench to the various heads of the income of last three years and stated that the main income of the Assessee was from interest and leasing and this constituted the principal business of the Assessee. Then the learned Counsel took the Tribunal to the copy of the memorandum of association and it was stated that the company was incorporated in the month of May, 1994 and at that time the main objects of the Assessee were dealing in shares and banking management. Thereafter, after 4 months the Assessee company amended its clauses by passing various boards resolutions and started the business of moneylending and leasing of assets. Approval was also sought from RBI. The attention of the Bench was also drawn on copy of approval from RBI placed on record. Various clauses of amended objects were also shown by the learned Counsel and it was stated that copies of all these are placed on record at pp. 26 to 78. Reliance was placed on the decision of the Delhi Bench of the Tribunal in the case of *NBI Industrial Finance Co. Ltd. v. Dy. CIT* (2004) 1 SOT 132 (Del); and on the decision of Special Bench of the Tribunal in the case of *Dy. CIT v. Venkateswar Investment & Finance (P) Ltd.* (2005) 92 TTJ (Cal) (SB) 1129 : (2005) 93 ITD 177 (Cal) (SB). It was explained that the lease rent and the interest have to be taken together for establishing the principal business of the

Assessee. Relevant paras of both the orders of the Tribunal (supra) were also read by the learned Counsel by which it was held that for the purpose of considering that Explanation to Section 73 is applicable or not, the interest income as well as lease rental income have to be taken into consideration. Further reliance was placed on the decision of Hon''ble Allahabad High Court in the case of Motor and General Sales (P.) Ltd. Vs. Commissioner of Income Tax, wherein financing of vehicles was held as business of moneylending. Reliance was also placed on the decision of Hon''ble Supreme Court in Commissioner of Income Tax, Bombay Vs. Gwalior Rayon Silk Manufacturing Co. Ltd., .

We have heard rival submissions and considered them carefully. After considering the relevant material and case law and the details on which our attentions were drawn by the learned Counsel, we find that Assessee's case falls under exception clauses of Explanation to 73. We have seen amended clauses of the company and found that the company had amended its objects by which the company started the business of investors, financiers, traders etc., and to carry on the business of consultancy and also to act as consultant in the field of industrial, business, financial consultants, and to act as consultant and to carry on the business of all and every kind of hire-purchase finance, lease and lease finance etc. The clauses of the amended memorandum of association are from 56 to 68. Copy of the same is placed on record from pp. 35 to 43. We have also seen the boards resolutions, copies of the same are placed at pp. 68 to 78. Copy of approval from RBI is placed at pp. 6 and 7. Certificate of registration from RBI is placed at p. 8. Statement of asset allocation and statement of income under various heads are placed at pp. 9 and 10. We note that out of total capital of Rs. 420 lacs the Assessee had purchased assets of Rs. 98.50 lacs and advanced loans of Rs. 86.11 lacs. Thereafter the Assessee has shown purchases of shares at Rs. 224 lacs. We have seen the allocation of funds in assets and found that during asst. yr. 1996-97 the allocation on account of assets on lease and loans advances was 46.53 per cent. During asst. yr. 1997-98 the allocation was 52.77 per cent and during asst. yr. 1998-99 this allocation was 57 per cent. Similarly, the income on account of interest, lease rent and consultancy was 55.16 per cent for asst. yr. 1996-97; 71.63 per cent for asst. yr. 1997-98 and 60.74 per cent for asst. yr. 1998-99. The remaining part of income is on account of dividend and consultancy charges which is 35.56 per cent for asst. yr. 1996-97; 19.25 per cent for asst. yr. 1997-98 and 23.43 per cent for asst. yr. 1998-99. Chart of the same is placed at p. 10, as stated above.

8. We are of the opinion that the finding of the two authorities below, viz., CIT(A) and Tribunal to the effect that the principal business of the Assessee is moneylending is based on cogent evidence and material on record, it being a finding of fact and therefore, it cannot be treated as perverse. Therefore, no substantial question of law arises.

9. This appeal is dismissed accordingly.