
(2006) 03 MP CK 0131
In the Madhya Pradesh High Court
Case No : IT Appeal No. 91 of 2003

Commissioner of Income Tax

APPELLANT

Vs

Gom Industries Ltd.

RESPONDENT

Date of Decision : 24-03-2006

Acts Referred:

Income Tax Act, 1961 — Section 260A, 36(1)

Citation : (2006) 203 CTR 66 : (2008) 299 ITR 42 : (2007) 160 TAXMAN 451

Hon'ble Judges : Ashok Kumar Tiwari, J; A.M. Sapre, J

Bench : Division Bench

Advocate : R.L. Jain and V. Mandlik, for the Appellant; R.K. Sarda, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Sapre, J.—This is an appeal filed by the Revenue (IT Department) u/s 260A of the IT Act, against the order dt. 27th May, 2003, passed by Tribunal in ITA No. 42/Ind/2000. This appeal was admitted for final hearing on following substantial questions of law :

1. Whether, on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the addition of Rs. 12,64,851 on account of disallowance of interest, especially when the interest-bearing funds were diverted for non-business purpose ?
2. Whether, on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the addition of Rs. 2,60,848 on account of legal and professional expenses for services relating to leasing of gas cylinder, especially when the assessee prima facie admitted this transaction to be the only paper transaction and did not claim depreciation and also did not offer any lease rent in respect of leasing of gas cylinder ?
2. In short, the question that arises for consideration in this appeal filed by the Revenue is : whether Tribunal was justified in holding that assessee is entitled to

get the benefit of Rs. 12,64,851 by way of interest accrued on a particular transaction which the AO had declined to grant to the assessee by adding the said amount in their total income in asst. yr. 1996-97.

3. The assessee is a limited company engaged in the business of manufacture of resins and fatty acid. During the assessment year in question, it was noticed that assessee had paid an amount of Rs. 1,04,33,920 to one M/s M.M. Industries for purchase of industrial gas cylinders. It was noticed that a sum of Rs. 97,29,630 was borrowed fund and the assessee had not shown any lease rent from such lease transaction. In this way the AO disallowed interest of Rs. 12,64,851. It is this transaction whose legality and genuineness was doubted by AO. In the opinion of AO, the transaction in question was not genuine and bona fide one and being bogus in nature, a sum of Rs. 12,64,851 was disallowed towards bank interest on account of interest-free advance to M/s M.M. Industries. This finding of AO was challenged by assessee in appeal to CIT(A). The CIT(A) upheld the finding of AO and dismissed the appeal. In further appeal by assessee to Tribunal, the same was allowed by the Tribunal. It was held on facts that transaction in question entered into by assessee with M/s M.M. Industries is genuine and proper. It was further held that once the transaction in question is held to be genuine, the same has got to be given effect to. As a consequence, the disallowance of interest to bank to the extent of Rs. 12,64,851 paid by assessee u/s 36(1)(iii) ibid was set aside and instead, the assessee was allowed to claim the benefit of Section 36(1)(iii) for claiming deduction towards payment of interest in respect of capital borrowed for the purpose of business. It is against this finding of Tribunal, the Revenue has come up in appeal.

4. Heard Shri R.L. Jain, learned senior counsel with Ku. V. Mandlik, learned Counsel for the appellant and Shri R.K. Sarda, learned Counsel for the respondent.

5. Having heard learned Counsel for the appellant and having perused record of the case, we are inclined to dismiss the appeal and uphold the finding of Tribunal recorded on the issue in question.

6. This is how the Tribunal dealt with the issue in question in para 15 of the impugned order :

We have considered the rival submissions carefully and have gone through the relevant documents placed on record. We find force in the contention of learned Authorised Representative. As has been discussed above in ITA No. 235/Ind/1998, that Tribunal had found that assessee all along treated the transaction regarding purchase and lease of gas cylinders to be genuine and had reasonable basis for entertaining such plea. This fact becomes further clear from the findings of AO that Mega Gases (P) Ltd. has entered into this type of lease transaction with 10 companies, some of which belong to multinational companies. In this background, we think assessee might have been cheated by Mega Gases (P) Ltd. in collusion with M/s M.M. Industries. Though this fact has not been proved

beyond doubt because assessee was never given any opportunity to cross-examine the witnesses recorded by Revenue, We also find that AO has not proved any nexus between the borrowed funds and payments made to M/s M.M. Industries. In these circumstances, we set aside the order of learned CIT(A) and delete this addition.

7. Mere perusal of aforesaid para would indicate that Tribunal went into the factual aspects of the case and having examined the factual documents brought on record at the instance of assessee in support of the bona fides of the transactions in question, recorded a finding of genuineness of transaction. In other words, the Tribunal was satisfied on facts that transaction in question is not bogus but genuine. It could be entered into in the circumstances appearing and there is a reason for its entering by the assessee for their business with the company.

8. In our opinion, the aforesaid finding being a finding of fact, this Court cannot upset such finding of fact in this appeal filed u/s 260A *ibid*. As a matter of fact, the question whether a particular transaction entered into by the assessee with particular person is essentially a question of fact and therefore, once any finding on either way is recorded by the Tribunal then the same is not liable to be interfered with by the High Court unless an error of law as contemplated u/s 260A *ibid* is pointed out. No such error is either pointed out or noticed.

9. In our opinion, thus, the appeal really does not involve any substantial question of law within the meaning of Section 260A *ibid*. As observed *supra*, there is no question framed so as to enable this Court to examine the entire transaction in question *de novo* on facts. Firstly, it is not legally possible in this appeal. Secondly, no question of law is framed to permit us to do that exercise. Thirdly, no perversity as such is pointed out in the impugned finding and hence, this Court cannot interfere in the impugned finding of fact recorded by the Tribunal.

10. Learned Counsel for the appellant placing reliance on a case reported as *The Commissioner of Income Tax, Central-II Vs. Orissa Cement Ltd.*, contended that impugned order is liable to be set aside. That case is distinguishable on facts. Once the Tribunal upholds the genuineness of transaction then in such event the benefit of transaction has to be given to assessee. There is no prohibition in law that assessee can never advance the amount without charging any interest on the advance amount. Every transaction has got to be examined on its terms and conditions entered into between the parties and with a view to find out whether it is a genuine one, or not. In this case, the Tribunal did record a finding that it is genuine. Such finding as observed *supra* is binding on this Court.

11. So far as second question of law is concerned, the Tribunal decided in favour of assessee because the other two main questions referred above were answered in favour of assessee. Since we have also upheld the finding on other two main questions, i.e., one which is subject-matter of this appeal and other which is

subject-matter of IT Appeal No. 91 of 1993 the second question framed in this appeal has to be answered against the Revenue and in favour of the assessee. In other words once the transactions in question are held to be genuine and bona fide, then in such event the payment made by assessee towards professional charges has to be held as legal and proper. We, therefore, answer the second question in favour of assessee and against the appellant (Revenue) in the light of other two main questions having been answered against the appellant.

12. Accordingly and in view of foregoing discussion, we are unable to notice any merit in this appeal. As a result, the appeal fails and is dismissed. No costs.