(1998) 03 MAD CK 0025

In the Madras High Court

Case No : T.C. No''s. 1826 and 1827 of 1986 (Reference No''s. 1257 and 1258 of 1986) & Tax Case No''s. 1826 and 1827 of 1986 (A.Y. 1972-73 and 1973-74)

Commissioner of Income Tax APPELLANT

Vs

Indian Express (Madurai) Ltd. RESPONDENT

Date of Decision : 03-03-1998

Acts Referred:

Citation : (2001) 165 CTR 456

Hon'ble Judges : R. Jayasimha Babu, J;N. Balasubramanian, J

Bench : Division Bench

Advocate : C.V. Ralan, for the Appellant; R. Kumar for T.N. Seetharaman and Hema Sampath, for the Respondent

Judgement

R. Jayasimha Babu, J.—For the assessment years 1972-73 and 1973-74, the following two questions of law had been referred at the

instance of the revenue :

(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in deleting the disallowance of interest of Rs. 45,400 and Rs.

60,900 attributable to the borrowals diverted to M/s Indian Express Newspapers (Bombay) (P) Ltd. through M/s Ace Investments Ltd. in the

assessments for the years 1972-73 and 1973-74 respectively ?

(2) Whether, on the facts and in the circumstances of the case the Tribunal was right in deleting the disallowances of provision for gratuity of Rs.

3,23,687 made in the assessment for the assessment year 1972-73 ?

2. Regarding the first question our answer has to be in the negative, in favour of the revenue and against the assessee in the light of our decision

rendered in T.C. No. 846 of 1984 (reported as Commissioner of Income Tax Vs.

Indian Express Newspapers (Madurai) P. Ltd., between the

same parties in respect of another assessment year of the assessee. The interest that was disallowed by the Income Tax Officer was on the sum of

Rs. 10,00,000 which the assessee claimed to have borrowed and used for the purpose of its business, but was, in fact, found to have been

diverted, to its associated company at Bombay for a building of its own, such diversion having been effected through Ace Investments Ltd. equity

capital. The assessee showed an investment of Rs. 10,00,000 and on the same day the amount was remitted by the subsidiary to the assessee''s

associate company at Bombay. It was found by the Income Tax Officer that though in the first year the interest income was shown by subsidiary in

subsequent year interest was paid and the office of the subsidiary was shown as the same that of the assessee and it was the staff of the assessee

who wrote the books of the account of the subsidiary. The amount of Rs. 10,00,000 so diverted was, therefore, held by us in T.C. No. 846 of

1984 (supra), to be the amount not utilised in the business of the company, consequently disentitling the assessee to deduct the amount of interest

stated to have been paid on that amount of borrowing.

3. So far as the second question is concerned, the Tribunal''s views is the correct view. The Tribunal affirmed the order of the Commissioner

(Appeals) who had directed the Income Tax Officer to allow the petitioner''s claim for deducting the provision made for gratuity subject to the

production of a certificate by the assessee regarding the scientific basis of this provision. That order of the Tribunal is in accordance with the law

laid down by the Supreme Court in the case of Shree Sajjan Mills Ltd. v. CIT (1985) 156 ITR 585 (SC). It was held by the apex court that

nature of employee''s right to receive payments of gratuity actually made to the employee on his retirement or termination of his services and that

the provision made in the profit and loss account for the estimated present value of the contingent liability properly ascertained and discounted on

an accrued basis as falling on the assessee in the year of account could be deducted either u/s 28 or section 37 of the Act, prior to the introduction

of section 40A(7) of the Act which was inserted in the year 1973. The assessment year for which the claim was made by the assessee being for

the assessment year 1972-73 before the introduction of section 40A(7) of the

Act, the order made by the Tribunal was in accordance with the law

which was applicable for the assessment year.

4. The second question, is, therefore, answered in favour of the assessee and against the revenue . Parties to bear their respective costs.

