(2001) 05 DEL CK 0130

In the Delhi High Court

Case No : IT Reference No. 109 of 1988 17 May 2001 & Income-tax Reference No. 109 of 1988

Commissioner of Income Tax APPELLANT

Vs

Orissa Cement Ltd. RESPONDENT

Date of Decision : 17-05-2001

Acts Referred:

Citation : (2001) 119 TAXMAN 744

Hon'ble Judges : Arijit Pasayat, C.J;D.K. Jain, J

Bench : Full Bench

Advocate : R.C. Pandey and Ms. Prem Lata Bansal, for the Revenu, for the Appellant;

Judgement

Arijit Pasayat, C.J.

Pursuant to the directions given by this court on an application made u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as the Act), the Tribunal, Delhi Bench ''D'', has referred the following question for opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that no disallowance could be made out of the interest paid by the assessed on its borrowed capital by reference to the funds advanced by it to its subsidiary company?"

2. Factual position in a nutshell is as follows :

The assessed is a company incorporated under the Companies Act, 1956. At the relevant point of time, it carried on business of manufacture and sale of cement. It has advanced an interest-free loan of Rs. 20 lakhs to its subsidiary Utkal Investment Ltd., on three dates. The Income Tax Officer took the view that the assessed-company was paying interest at a heavy rate on its own borrowings and the funds had been advanced voluntarily to the subsidiary company which amounted to diversion of income from its own hands. The assessed had raised loans from banks and other depositors in two assessment years, i.e., 1976-77 and 1975-76 to the extent of Rs. 87,31,060 and Rs. 1,13,97,286, respectively. Interest at the rate of 11 to 15 per cent was paid to the depositors and banks. Accordingly, the Income Tax Officer brought to tax a sum of Rs. 48,000 representing interest on the loans at the rate of 12 per cent per annum. The assessed''s stand that the amount had been advanced out of the sale proceeds and not out of the borrowed funds was not accepted. On appeal, the Commissioner (Appeals) held that no disallowance out of the interest paid by the assessed on its own borrowings could be made. It recorded a positive finding that the advance to the subsidiary company did come out of the sale proceeds. The revenue carried the matter in appeal before the Tribunal. Considering the factual aspects the Tribunal upheld the Commissioner (Appeals)''s views. Prayer for reference was made which was rejected. Subsequently Pursuant to the directions given by this court, the question as set out above has been referred for opinion.

3. We have heard the learned counsel for the revenue. There is no appearance on behalf of the assessed in spite of notice. The learned counsel for the revenue submitted that when assessed had paid interest to the depositors and the banks, there was no reason why it should have given money without interest to the subsidiary company.

4. We find that a finding of fact has been recorded by the Commissioner (Appeals) and the Tribunal to the effect that the advance to the subsidiary company came out of the sale proceeds and not out of the funds borrowed from the depositors and the banks. The conclusion is essentially factual, giving rise to no question of law. We, Therefore, decline to answer the question referred.

5. Reference application is, accordingly, returned unanswered.