
(2002) 11 DEL CK 0078

In the Delhi High Court

Case No : Income Tax A. No"s. 81 to 84 and 86 of 2002

Commissioner of Income Tax

APPELLANT

Vs

Tin Box Co.

RESPONDENT

Date of Decision : 13-11-2002

Acts Referred:

Citation : (2003) 182 CTR 171 : (2003) 260 ITR 637 : (2004) 135 TAXMAN 145

Hon'ble Judges : Sharda Aggarwal, J;D.K. Jain, J

Bench : Division Bench

Advocate : J.R. Goel and Ajay Jha, for the Appellant; Kavin Gulati and Medhanshu Tripathi, for the Respondent

Judgement

D.K. Jain, J.—These five appeals by the Revenue u/s 260A of the Income Tax Act, 1961 (for short "the Act"), are directed against a consolidated order dated October 19, 2001, passed by the Income Tax Appellate Tribunal, Delhi Bench "C", New Delhi (for short "the Tribunal"), in I. T. A. Nos. 4429, 4430, 4432, 5135/Delhi of 1996 and 4354/Delhi of 1998, pertaining to the assessment years 1988-89, 1990-91, 1991-92, 1992-93 and 1994-95, respectively.

2. Since in all the appeals an identical issue has been raised, for the sake of convenience these are being disposed of by this common order. However, we shall take the facts of the assessment year 1988-89 as illustrative.

3. The assessed, a registered firm, engaged in the business of manufacture and sale of tin containers and printers, had been advancing interest-free loans to its sister concern, namely, Pant Nagar Soya Milk Products Pvt. Ltd. (PNSMPL), since the assessment year 1984-85. At the same time it had been availing of overdraft loan facilities from the State Bank of India against hypothecation of stocks, etc., and was paying interest to the bank. During the course of assessment proceedings, the Assessing Officer required the assessed to show cause as to why a part of interest, proportionate to the loan amount, payable/paid to the State Bank of India and claimed as business expenditure, be not disallowed. Not

being satisfied with the Explanation furnished by the assessed, the Assessing Officer disallowed a sum of Rs. 3 lakhs out of the total interest paid by the assessed to the State Bank of India in its overdraft account.

4. Aggrieved, the assessed preferred appeals against the disallowance to the Commissioner of Income Tax (Appeals) (for short "the CIT(A)") but without any success. The assessed took the matter in further appeal to the Tribunal. The Tribunal, by the impugned order, had deleted the aforementioned disallowance made by the Assessing Officer. Hence, the present appeals.

5. The following questions have been formulated in the appeals for adjudication :

"(a) Whether, on the facts and in the circumstances of the case, the Tribunal was incorrect, both on facts and in law, in holding that the interest paid by the assessed to the SBI was admissible deduction and no part of it could be disallowed ?

(b) Whether the learned Income Tax Appellate Tribunal was correct in law and on the facts of the case in concluding that no interest paid to the State Bank of India can be disallowed because of interest-free loans advanced to the sister concern. Pant Nagar Soya Milk Products Pvt. Ltd., free of interest ?

(c) Whether the order passed by the learned Income Tax Appellate Tribunal is perverse in facts and in law ?"

6. We have heard Mr. J.R. Goel, learned senior standing counsel for the appellant, and Mr. Kavin Gulati, on behalf of the assessed.

7. It is vehemently submitted by Mr. Goel, that in respect of the assessment year 1988-89 the Commissioner of Income Tax (Appeals), had remanded the case back to the Assessing Officer with a direction to grant an opportunity to the assessed to prove that the interest-free advances made by it to the sister concern were not out of the amount withdrawn from the bank overdraft account but were advanced from the unsecured interest-free loans and capital of the partners in the firm but the assessed failed to produce any evidence in that behalf despite several opportunities, showing that advances to the sister concern were not from the assessed's own resources. He would urge that in the absence of the relevant information, the Assessing Officer had no option but to make an ad hoc disallowance on the amount advanced by the assessed to its sister concern, in support of the proposition that the onus to prove that there was no nexus between the borrowed funds and the interest-free advances lay on the assessed. Strong reliance has been placed on a decision of this court in *The Commissioner of Income Tax, Delhi-II, New Delhi Vs. Motor General Finance Ltd.*, . It is thus, urged that the Tribunal having ignored various material aspects, its orders involve substantial questions of law.

8. Mr. Gulati, learned counsel for the assessed, on the other hand, would submit that the findings arrived at by the Tribunal to the effect that the interest-free advances to the sister concern were out of interest-free funds available with the

assessed, being based on facts and figures, extracted in the impugned orders also, the orders do not give rise to any substantial question of law. In support of the proposition that it is not for the Revenue to direct the assessed to run its business in a particular manner, learned counsel has also placed reliance on a decision of this court in Commissioner of Income Tax Vs. Dalmia Cement (B.) Ltd., . It is asserted that the assessed having established that the amounts borrowed from the State Bank of India had been used for the purpose of the business, no disallowance for the interest paid could be made.

9. We are of the opinion that the issues raised in the appeals cannot be said to involve any substantial question of law.

10. While noticing that the Department had not been able to controvert or disprove the fact that the assessed had substantial capital and interest-free funds available with it, not only in the preceding years but also in the years under consideration, which far exceeded the interest-free advances to the sister concern, the Tribunal finally concluded as under :

"We are in agreement with the submissions made by learned counsel for the appellant because the factual position as submitted before us by learned counsel for the appellant has not been controverted by the learned Departmental Representative. The admitted facts are that the appellant firm has been enjoying overdraft facilities from the State Bank of India, Chandni Chowk Delhi, since long time past against the hypothecation of goods, etc., and pledge of land, building, plant and machinery and the interest paid on such overdraft account has been allowed by the Revenue year after year. Even in the assessment year 1982-83, no such disallowance had been made when admittedly substantial interest-free funds had been advanced to the sister concern. The appellant has not paid any interest to any other party either in the past or during the year under appeal. Further in the years under appeal, either, the fresh advances to PNSMPL have been quite insignificant or there have been absolutely no fresh advances made by the appellant, rather during the assessment years 1990-91 to 1992-93 the appellant had received back from the sister concern more than Rs. 10 lakhs. The capital of the firm and interest-free unsecured loans with the appellant far exceed the amounts advanced to the sister concern in all the years under appeal a fact neither controverted nor disproved by the learned Departmental Representative also," (underlined for emphasis)

11. Additionally, the Tribunal has also noted that the Departmental Representative could not point out any specific interest bearing borrowed funds, which had been diverted by the assessed to its sister concern.

12. The aforementioned findings of the Tribunal being based on the relevant evidence on record, no question of law, much less a substantial question of law, arises from the orders of the Tribunal. It is not shown to us as to which finding of the Tribunal is either without any evidence or material or it is contrary to the evidence, to term it as perverse. Thus, there is no scope for interference by this

court on the aforementioned findings of fact recorded by the Tribunal.

13. All the appeals, being without any merit, are dismissed. No costs.