(2014) 12 GUJ CK 0098

In the Gujarat High Court

Case No : Tax Appeal Nos. 426, 427 and 428 of 2007

Deepak Nitrite Ltd. APPELLANT

Vs

Joint Commissioner of Income Tax RESPONDENT

Date of Decision : 18-12-2014

Acts Referred:
Income Tax Act, 1961 — Section 142(1), 143(1)(a), 143(2), 36(1)(iii), 37

Citation : (2014) 12 GUJ CK 0098

Hon'ble Judges : Kaushal Jayendra Thaker, J;K.S. Jhaveri, J

Bench : Division Bench

Advocate : Manish J. Shah, Advocates for the Appellant; K.M. Parikh, Advocates for the Respondent

Judgement

K.S. Jhaveri, J.—By way of these Tax Appeals, the assessee has challenged the judgment and order passed by the Income Tax Appellate Tribunal in ITA No. 1707/Ahd/2001 for AY 1991-92, ITA No. 1013/Ahd/2002 for AY 1995-96 and ITA No. 1126/Ahd/2005 for AY 2001-02.

2. While admitting these Tax Appeals, this Court has framed the following substantial questions of law:

Tax Appeal No. 426/2007

(1) Whether on the facts and in the circumstances of the case, the Tribunal was right in disallowing the interest of Rs. 26,39,697/- treating the amount borrowed for the purpose of brining the assets into existence for the purpose of establishment of plants for manufacturing ONCB, PNCB, ONT and PNT?

(2) Whether extension of the plant is for extension of existing business?

Tax Appeal No. 427/2007

(1) Whether on the facts and in the circumstances of the case, the Tribunal was right in disallowing the interest of Rs. 7,75,000/- treating the amount borrowed for the purpose of brining the assets into existence for the purpose of

establishment of plants for manufacturing ONCB, PNCB, ONT and PNT?

(2) Whether extension of the plant is for extension of existing business?

Tax Appeal No. 428/2007

Whether on the facts and in the circumstances of the case the Tribunal was right in law in disallowing the interest of Rs. 9,48,054/- incurred by the assessee on the borrowings?"

3. The facts of the present case are that the return of income was filed on 31.12.1991. In the return, the assessee company declared income under the Income-tax Act at Rs. 68,55,931/-. Processing u/s. 143(1)(a) was made on 9.3.92, determining the total income at Rs. 74,43,220/-. In response to various notices issued u/s. 143(2) and 142(1) of the Act, the assessee has furnished necessary details. After considering the material on record, the assessment order came to be passed. The said assessment order has been challenged by the assessee before the CIT(A), which came to be partly allowed. Against the said order of CIT(A), the Revenue has preferred appeal being ITA NO. 1707/Ahd/2001 and ITA No. 1013/Ahd/02 and the assessee has preferred appeal being ITA NO. 1126/Ahd/05 which were partly allowed by the Tribunal. Being aggrieved by the order of the Tribunal, the assessee has preferred all these Tax Appeals before this court.

4. We have heard the learned advocates appearing for the parties and considered the submissions. The Tribunal has in its order relied on the order dated 12th May, 2006 passed in ITA No. 735/Ahd/1999, which was carried by way of appeal before this Court which is reported in Gujarat State Fertilizer and Chemicals Ltd. Vs. Asstt. Commissioner of Income Tax, decided on August 22, 2008, in the case of Gujarat State Fertilizer And Chemicals Ltd. v. Assistant Commissioner of Income-Tax, wherein, the issue is now decided in favour of the assessee.

"3. Mr. J.P. Shah, learned counsel appearing for the petitioner has submitted that the issue is squarely concluded by the decision of the Hon''ble Supreme Court in the case of Deputy Commissioner of Income Tax, Ahmedabad Vs. Core Health Care Ltd., . He had invited the Court''s attention to the ratio laid down by the Hon''ble Supreme Court in the same judgment, which is squarely applicable to the facts of the present case. The Hon''ble Supreme Court in that case has held that Section 36(1)(iii) of the Income tax Act, 1961 has to be read on its own terms: it is a code by itself. It makes no distinction between money borrowed to acquire a capital asset or a revenue asset. All that the section requires is that the assessee must borrow capital and the purpose of the borrowing must be for business which is carried on by the assessee in the year of account. Unlike Section 37 which expressly excludes an expense of a capital nature, Section 36(1)(iii) emphasise the user of the capital and not the user of the asset which comes into existence as a result of the borrowed capital. The legislature has, therefore, made no distinction in Section 36(1)(iii) between "capital borrowed for a revenue purpose" and "capital borrowed for a capital purpose", and the Court, therefore, took the view in the said decision that the assessee is entitled to claim interest paid on borrowed capital provided that the capital is used for business purpose irrespective of what may be the result of using the capital which the assessee has borrowed. "Actual cost" of an asset has no relevancy in relation to section 36(1)(iii) of the Act. Applying the ratio of the decision of the Supreme Court to the facts of the present case and considering that there is no dispute about the fact that the capital borrowed was used for the purpose of business and whether it is for the capital purpose or revenue purpose is immaterial while allowing deduction under Section 36(1)(iii) of the Act, the appeal of the appellant is required to be allowed.

5. The said matter was carried to the Hon''ble Supreme Court and the SLP was dismissed. In that view of the matter, the issue is concluded and no further reasonings are required to be assigned since the Tribunal has dismissed the appeal on relying the decision in the case of GSFC. As the facts are similar and identical and as we have relied on the decision of the Apex Court which has reversed the judgment on which the Tribunal had relied, we do not think that further elaborate reason or discussion of facts required to be gone into as we have perused the entire record of all these matters and the questions of law as framed hereinabove are not required to be discussed at length as they are concluded by the decision of the Apex Court. Ld. Counsel for the respondent is not in a position to show any later decision of the Apex Court taking a contrary view than that taken in these matters. Hence, the questions are answered in favour of the assessee and against the Revenue.

6. In Tax Appeal No. 426/2007, it is held that the Tribunal was not right in disallowing the interest of Rs. 26,39,697/- treating the amount borrowed for the purpose of brining the assets into existence for the purpose of establishment of plants for manufacturing ONCB, PNCB, ONT and PNT and the extension of the plant is not for extension of existing business. In Tax Appeal No. 427/2007, it is held that the Tribunal was not right in disallowing the interest of Rs. 7,75,000/- treating the amount borrowed for the purpose of brining the assets into existence for the purpose of establishment of plants for manufacturing ONCB, PNCB, ONT and PNT the extension of the plant is not for extension of existing business. In Tax Appeal No. 428/2007, it is held that the Tribunal was not right in law in disallowing the interest of Rs. 9,48,054/- incurred by the assessee on the borrowings. The Tax Appeals stand allowed.

