
(2009) 05 CAL CK 0063
In the Calcutta High Court

JCT Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 20-05-2009

Acts Referred:

Income Tax Act, 1961 — Section 143, 260A, 263, 36

Citation : (2009) 05 CAL CK 0063

Hon'ble Judges : Sankar Prasad Mitra, J; Pinaki Chandra Ghose, J

Bench : Division Bench

Judgement

1. This appeal was admitted u/s 260A of the Income Tax Act for the assessment year 1994-95 on the following questions:

(a) Whether the Tribunal was justified in law in upholding the disallowance of interest expenditure to the extent of Rs. 10,24,59,637 incurred by the appellant in respect of capital borrowed and utilized for the purposes of its business in respect of which the appellant was entitled to deduction u/s 36(1)(iii) of the Income Tax Act, 1961? (b) Whether there was any material before the Tribunal to hold that any part of the interest-free loans to the subsidiary and associate companies was given by the appellant out of borrowed funds and its purported findings upholding the disallowance of interest expenditure of Rs. 10,24,59,637 have been arrived at by ignoring the relevant materials and/or by taking into consideration irrelevant and/or extraneous materials and/or are otherwise arbitrary, unreasonable and perverse?

2. The facts of the case briefly are as follows:

During the relevant previous year for the assessment year 1994-95 the appellant had borrowed funds on which it had paid interest. The deduction for such interest was allowed by the assessing officer in the assessment made u/s 143(3) of the Income Tax Act, 1961 (the Act). Thereafter the CIT initiated proceedings u/s 263 of the Act on the ground that the assessing officer had not investigated whether borrowed funds were given by way of interest-free loans to the subsidiaries of

the appellant. The initiation of the proceedings u/s 263 of the Act were challenged by the appellant by way of writ proceedings before this Hon''ble court in which it was not successful. Thereafter by an order dated 16th March, 1999 the CIT set aside the assessment made by the assessing officer with a direction to frame it afresh. Against the said order of the CIT the petitioner had taken an appeal to the Tribunal but was not successful therein. Ultimately the assessing officer pursuant to the said order of the CIT u/s 263 of the Act passed an order of assessment dated 27-2-2001 u/s 263/143(3) of the Act in which he disallowed a sum of Rs. 10,24,59,637 out of the interest paid by your petitioner on borrowed funds.

3. During the relevant previous year for the assessment year 1994-95 your petitioner had outstanding advances and receivables from the concerns mentioned hereinafter. The assessing officer disallowed interest paid on borrowed funds on the assumption that such borrowed funds were utilized in respect of such outstanding advances to such firms. The interest paid non-borrowed funds were disallowed as under:

Concern	Amount	Sl. No.	Name of
1. Chohal Investments Ltd.	2,71,53,343	2.	Poly Investment Ltd.
Ltd. 26,353	7,44,13,340	3.	Gupta Syal Ltd.
Kishanchand Spinning Mills Ltd.	4,61,336	4.	Kidarnath
Kishanchand Finance & Investment Ltd.	4,05,265	5.	Total
10,24,59,637			

M/s Chohal Investments Ltd., Poly Investments Ltd. and Gupta Syal Ltd. are appellants wholly-owned subsidiaries.

4. The fact that no part of the borrowed funds were utilised for making any advance to any of the said concerns was not considered by the assessing officer. The petitioners appeal before the Commissioner (Appeals) on the above issue was also unsuccessful. In the further appeal before the Tribunal your petitioner reiterated its submissions on facts and in law. Such submissions made before the Tribunal would appear from the miscellaneous application which the appellant filed against the order of the Tribunal affirming the said order of assessing officer and Commissioner (Appeals) disallowing the said interest (miscellaneous application--pp. 227 to 237 of paper book). The facts stated in the said miscellaneous application are true and correct. Such facts are not disputed. The Tribunal dismissed the said miscellaneous application on the ground that allowing the same would amount to reviewing its order.

5. The facts relating to the amounts outstanding against the said concerns are summarised in Annex. A which were duly submitted before the assessing authorities and the Tribunal supported by necessary evidence but the same were not at all considered by the Tribunal.

6. The various facts as mentioned in Annex. B hereto as would appear from the miscellaneous application filed before the Tribunal, were urged before it and the various documents filed in the paper book were relied upon in support thereof at the time of the hearing. The Tribunal, however, failed to consider and/or deal with any of such facts and/or evidence and contentions of the appellant. The facts stated in the said miscellaneous application were not controverted either by the department or the Tribunal which rejected the said miscellaneous application only on the ground that it would amount to a review of its order.

7. The various facts and documents in support thereof and contentions raised which the Tribunal failed to consider and deal with are summarized hereinbelow:

(a) No part of the borrowed funds was utilized for any such interest-free advances to the subsidiaries and others.

(b) The amounts were advanced in earlier years and in assessment proceedings of these years i.e. from assessment year 1991-92 onwards the issue was investigated, considered and no disallowance of any interest was made as it was found that no part of the borrowed funds was utilized therefore.

(c) The advances made to such subsidiaries were substantially reduced during the year from earlier brought forward balances.

(d) Except the assessment year involved herein, no such disallowance has been made in the earlier or subsequent three years.

(e) None of the judicial decisions relied upon including that of jurisdictional High Court were considered or adverted to.

8. Accordingly it is submitted that Tribunal has failed to consider all the arguments and to pass a reasoned order. It is submitted that a decision of the Tribunal which fails to concede the relevant facts perverse. It is further submitted that in this matter the Tribunal has ignored all the relevant materials, evidence and documents placed before it and ignoring the said documents the order was passed by the Tribunal. Therefore, it is submitted that the Tribunal also fails to deal with the contentions raised before it. Accordingly, the said order is not sustainable under the eyes of law. It is further pointed out that the learned Tribunal failed to apply its mind or to pass a reasoned order.

9. Reliance has also been placed before us in *Udhavdas Kewalram Vs. Commissioner of Income Tax, Bombay City I*, *Kulwant Kaur and Others Vs. Gurdial Singh Mann (dead) by Lrs. and Others etc.*, *Deputy Commissioner of Income Tax Vs. H.V. Shantharam*, *Vinay Kumar Modi Vs. Commissioner of Income Tax*, *Smt. Shree Kumari Mundra Vs. Commissioner of Income Tax*, ,

Commissioner of Income Tax Vs. Agarwal Hardware Works Pvt. Ltd., and CCE v. Indo Zinc Ltd. 2009 (235) ELT 769.

In these circumstances it is submitted that the matter should be remanded back before the Tribunal.

10. The certain facts are also brought to our notice which are also annexed to the paper book filed before us and our attention was drawn in particular to a requisition dated 14-6-1993 (appearing at p. 155, 160 of paper book). On the basis of such requisition the appellants duly by its letter dated 20-10-1993 furnished the full particulars in respect of the loans and advances. The appellant also by a letter dated 21-2-1994 (150 of paper book) gave full details relating to the advance made by it to its three subsidiaries. The further documents which are annexed to the paper book, have also been placed before us by Mr. Bajoria. He pointed out that in the order of assessment (p. 169 of paper book) the order of amalgamation was discussed by the assessing officer and it was recorded that income was being computed on the basis of details and documents and explanation submitted by the appellant. In the said order of assessment no disallowance was made on any interest on borrowed funds with reference to the said outstanding against the said various concerns.

11. The following facts were placed before us by Mr. Bajoria:

In the previous year relevant to the assessment year 1992-93, an advance of Rs. 37.56 crores was made by the appellant to its subsidiary Poly Investments Co. Ltd. In the course of the assessment proceedings the appellant duly pointed out that such advance was made from the said proceeds of 62,60,000 equity shares held by it of RT Electronics Ltd. to Chohal Investments Ltd. (pp. 70 to 72 of paper book). The details of the said amount would also appear from the statement of the account of Poly Investments Ltd. (p. 68 of paper book). Sale of the said shares was also duly disclosed in the schedule of investments and the balance sheet of the appellant for the said year ended 31st March, 1992 (p. 76 of paper book). The said balance sheet along with the computation of income was filed with the assessing officer. In the computation of total income for the said assessment year 1992-93 the capital gains made on the sale of the said shares of RT Electronics (P) Ltd. was duly shown (pp. 91 and 92 of paper book). In the order of assessment for the said assessment year 1992-93 the assessing officer did not make any disallowance in respect of any interest paid on the borrowed funds with reference to the amounts outstanding against any of the said parties after being fully satisfied that the fresh amounts given were from the sale proceeds of the investments and/or internal accruals and no part of the borrowed funds had been utilised therefore.

Assessment order for 1992-93 (p. 93 of paper book).

12. During the previous year for the assessment year 1993-94 the appellant advanced a sum of Rs. 12.30 crores to its subsidiary Chohal Investments Company Ltd. out of the sale proceeds of shares of M/s Ballarpur Industries Ltd.

held by it. The bank statement of account with HSBC in which such sale proceeds were deposited and from which the said advance was made to M/s Chohal Investments Ltd. is at p. 105 of paper book. In its computation of income for the assessment year 1993-94 and the balance sheet and return the profit arising from sale of the said shares was duly disclosed (pp. 118 and 119 of paper book). Balance sheet and the schedule of assets are at pp. 120 and 121 of paper book. After examining all the aforesaid facts assessment for the assessment year 1993-94 was made on 20th March, 1997 and in such assessment, no disallowance was made in respect of any interest on the borrowed funds.

13. During the year ended 31-3-1994, involved in this appeal, the appellant sold to M/s Chohal Investments Ltd. 2,00,000 equity shares of Ballarpur Industries Ltd. The sale proceeds of the said shares of Rs. 5.65 crores was part of the outstanding advance during the year from the said concern. In the IT return and in the computation of total income filed for the said assessment year 1994-95 the profits derived from sale of the said shares were duly disclosed (pp. 138/140 of paper book). The bill for sale of the said shares at p. 123 of paper book. The sale of the said shares was also reflected in the balance sheet of the appellant (pp. 124 to 125 of paper book). In the assessment for the assessment year 1994-95 the transaction of sale of the said shares has been duly accepted by the assessing officer.

14. It would be seen that the amount advanced to Gupta & Syal Ltd. during the year was only Rs. 15,000 and the rest was the opening balance. The amount advanced to Kishan Chand Spinning Mills Ltd. during the year was about Rs. 85,981 on the various days and the rest Rs. 25.62 lakhs was the opening balance of the earlier years. From the accounts of Kedarnath Kishan Chand Finance & Investments Ltd. it would be seen that no advance was made during the year and the entire amount related to the earlier years balance. In the case of Poly Investments Ltd. it would be seen that the total advance to the said subsidiary during the year was reduced. The opening balance of the advance to the said firm was Rs. 43.54 crores whereas the closing balance was Rs. 33.85 crores only.

15. The statement of accounts of the appellant with the said companies for the year ended 31-3-1994, relevant for the assessment year under appeal, are at p. 122 of paper book of M/s Chohal Investments Ltd.

16. It may further be stated that in the following assessment years 1995-96 to 1997-98 no such disallowance of the interest on borrowed funds have been made with reference to the said advances.

17. There was no basis whatsoever for the assessing officer or the Commissioner (Appeals) to conclude that borrowed funds were utilised by the assessee for making advances to the said concerns during the year with reference to which any disallowance could be made.

18. The important facts which were highlighted before the Tribunal and were completely lost sight of and not taken into consideration and as have been

pointed out in the miscellaneous application, are summarised hereinbelow.

19. In respect of the amounts outstanding against the various concerns as stated hereinbefore most of it were brought forward from the earlier years. A statement of the opening balance and closing balance in respect of the said various concerns is set out hereinbelow:

----- SI No.							
Name of Concern				Opening balance as on 31-3-1994	Closing balance as on 1-4-1993		

						1.	
Chohal	Investments	Ltd.	Rs.	59,80,26,792	Rs.	16,30,14,292	

						2.	
Poly	Investments	Ltd.	Rs.	43,54,00,163	Rs.	33,55,95,062	

						3.	
Gupta	&	Syal	Ltd.	Rs.	1,41,404	Rs.	1,56,004

						4.	
Kishanchand	Spinning	Mills	Ltd.	Rs.	26,62,979	Rs.	26,49,071

						5.	
Kidarnath Kishanchand Finance & Investments Ltd.				Rs. 22,51,470	Rs.	22,51,470	

20. From the above figures, according to Mr. Bajoria it would be seen that the amounts outstanding against the two subsidiaries Chohal Investments Ltd. and Poly Investments Ltd. were substantially reduced during the year. In the case of the subsidiary Gupta & Syal Ltd. there was an increase of Rs. 15,000 only. In the case of Kishan Chand Spinning Mills Ltd. the increase was of Rs. 85,981 only and in the case of Kidernath Kishan Chand there was no increase.

21. Mr. Bajoria pointed out further that miscellaneous application was also filed before the Tribunal but the Tribunal did not advert to any of the argument and the document placed before us and did not deal with the submissions made by the assessee. In these circumstances he submitted that the Tribunal has erred in passing that order.

22. In these circumstances, he submitted that the matter should be remanded back and to be decided by the Tribunal afresh.

23. Learned Counsel appearing on behalf of the department also submitted that the matter may be remanded back before the Tribunal so that the Tribunal can hear out the matter afresh after considering all the materials which have been placed in this paper book and in particular with regard to the points on questions of law which have been raised before us.

24. Accordingly, we set aside the order of the Tribunal and direct that the matter should be heard out by the Tribunal on the above those two points afresh.

25. For the reasons stated hereinabove the appeal is disposed of.