(2007) 02 DEL CK 0186

In the Delhi High Court

Kiranjit Foils Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 14-02-2007

Acts Referred:

Citation : (2008) 167 TAXMAN 244

Hon'ble Judges : Vidya Bhushan Gupta, J;Madan B. Lokur, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The assessee is aggrieved by the Order dated 29-9-2004 passed by Income Tax Appellate Tribunal, Delhi Bench ''G'' in ITA No. 2497 (Delhi) of 2000, dated 29-9-2004 relevant for the assessment year 1996-97.

2. The assessee had entered into an agreement with a Hungarian company for the purchase of a second-hand plant costing US$ 14,40,598. The assessee had appointed M/s. SBI Caps Ltd. to appraise the project and had apparently obtained some assurances from the State Bank of Travancore to sanction a fund-based loan and a non-fund-based loan for opening a letter of credit in favour of the Hungarian company.

3. The assessee generated funds by issuing shares and unsecured loans from promoters, friends and relatives for this purpose. Initially, the amount so generated was deposited in the Canara Bank and then transferred to the State Bank of Travancore on 30-3-1995 and 1-4-1995. The amount was put in a short-term fixed deposit on which the assessee earned interest of Rs. 13,95,304.

4. The letter of credit was not established by the assessee apparently because of some scam involving M/s. M.S. Shoes. Later, the Hungarian company sold the second hand plant to somebody else. In other words, the entire deal fell through.

5. The assessing officer was of the view that the interest earned by the assessee from the short-term fixed deposit was not a capital receipt but was income

earned from other sources and it was taxed accordingly. The assessee filed an appeal before the Commissioner (Appeals) who reversed the conclusion of the assessing officer.

6. Learned Counsel for the assessee heavily relied upon the following passage from the order passed by the Commissioner (Appeals) in his favour, which reads as under:

I have carefully examined the facts and legal aspect of the case. From the submission and documents produced before me it is apparent that there was no surplus funds with the assessee. The funds were specifically raised from friends and relatives and kept in fixed deposit with the bank as margin money for opening of LC. The assessee was not free to utilize the money in any manner as it wished; it had no choice but to keep the money in the bank to meet its part of commitment. The assessing officer had no justification in treating the deposit with the bank as deployment of surplus funds. Applying the ratio of (1999) this interest income of Rs. 13,95,304 as closely-linked with the setting up of the project, therefore, it is capital receipt in nature and to be reduced from the cost of the project and cannot be taxed as revenue income. Thus, on the basis of this discussion, the appellant get a relief of Rs. 13,95,304.

7. The contention of learned Counsel for the assessee is that there were no surplus funds with the assessee and this was so held by the Commissioner and since the deposit was inextricably linked with the intention to commence business, the amount was in fact a capital receipt amount income earned from other sources.

8. The revenue preferred an appeal before the Tribunal against the order passed by the Commissioner. By the impugned order, the Tribunal allowed the appeal and that is why the assessee is before us.

9. The question whether the amounts generated were surplus funds or not is a finding of fact and we are of the view that the Tribunal rightly held that the amount raised by the assessee was surplus funds. Learned Counsel for the assessee contended that the amount deposited with the State Bank of Travancore was towards margin money for opening a letter of credit. There is nothing to suggest this except the contention of learned Counsel. We note that the Commissioner has observed that the assessee was not free to utilise the money in any manner as it wished, but we do not find any basis for this conclusion. The assessee could have deposited the money with the State Bank of Travancore specifically towards the margin money for opening a letter of credit but instead placed the amount in a short-term fixed deposit and it must bear the consequence for this.

10. Learned Counsel for the assessee submits that the short-term fixed deposit was required to be converted into margin money for opening letter of credit as per the practice being followed by the Bank, but unfortunately, we do not have any such practice on record nor it has been pleaded anywhere by the assessee.

11. Under these circumstances, we are of the view that there is no error in the view taken by the Tribunal that the loan amount raised by the assessee was in fact surplus funds which were deposited in a short-term fixed deposit.

12. Learned Counsel for the assessee has relied upon CIT v. Karnal Cooperative Sugar Mills Ltd. (2000) 243ITR 21 (SC) in support of his contention that if the margin money is deposited for the purpose of opening a letter of credit, it would be a deposit which is inextricably linked with business activities. On a perusal of the decision cited by learned Counsel, we find that the Supreme Court has observed in the very first sentence of the order that the assessee has deposited money to open a letter of credit for the purchase of machinery required for setting up its plant in terms of the assessee''s agreement with the supplier. This specific fact is absent insofar as we are concerned because there is nothing to show that the assessee has deposited the money to open a letter of credit. All that is available on record is that the assessee deposited money in a short term fixed deposit. We, therefore, do not find any similarity in the decision rendered by the Supreme Court in the case of Karnal Co-operative Sugar Mills Ltd. (supra) and the present appeal.

13. Consequently, we are of the view that there is no error in the decision of the Tribunal that the assessee had not commenced its business. In any case this is a question of fact, which has been arrived at by the Tribunal, a in which we do not find any perversity. The result is that it must be held that the interest income earned by the assessee is not a capital receipt but is income from other sources.

14. No substantial question of law arises for our consideration u/s 260A of the Income Tax Act. Accordingly, the appeal is dismissed.

