
(2008) 04 DEL CK 0081
In the Delhi High Court
Case No : ITA No. 689 of 2006

Magnum Power Generation Ltd.

APPELLANT

Vs

Additional Commissioner of Income Tax

RESPONDENT

Date of Decision : 23-04-2008

Acts Referred:

Citation : (2008) 220 CTR 271 : (2009) 311 ITR 332 : (2008) 173 TAXMAN 146

Hon'ble Judges : Manmohan Singh, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : Y.K. Kapoor, for the Appellant; R.D. Jolly, for the Respondent

Judgement

Madan B. Lokur, J.—The Revenue is aggrieved by an order dated 30th September, 2005 passed by the Income Tax Appellate Tribunal, Delhi Bench "G" in ITA Nos. 3998/Del/2003 and 4025/Del/2002 relevant for the Assessment Years 2001-2002 and 1998-99 respectively.

2. The assessed had given an inter corporate deposit on 22nd September, 1995 to M/s Padmini Polymer Ltd. (for short "PPL") for a period of 90 days with interest @ 24% p.a. The inter corporate deposit was renewed from time to time.

3. It appears that PPL did not return the amount to the assessed because of lack of adequate funds. It further appears that the assessed received some amounts from PPL in installments but a large part of the amount was not returned to the assessed because the cheque given by PPL was dishonoured. The assessed thereupon initiated proceedings against PPL under the Negotiable Instruments Act in respect of the bounced cheque.

4. The assessed also initiated other proceedings to recover the principal amount as well as interest thereon by filing a winding up petition under the Companies Act, 1956 in this Court on 17th May, 1999. In the winding up petition, the learned Company Judge passed certain directions as a result of which PPL made payments to the assessed and eventually, the entire principal amount of Rs. 1 crore was received by the assessed sometime by December, 2005. The assessed

also received interest of Rs. 1,01,000/- for the entire period.

5. According to the assessed, the interest amount due for this period was not liable to be taxed, even though the assessed was maintaining a mercantile system of accounting, since income had not accrued to the assessed and the debt was a sticky debt.

6. The contention urged by the assessed was rejected not only by the Assessing Officer but also by the Commissioner or Income Tax (Appeals) as well as by the Tribunal. In fact, the Assessing Officer noted that the assessed had changed its method of accounting only in respect of the interest accrued from PPL from a mercantile system to a cash system. For all other purposes, the assessed continued to maintain the cash method of accounting.

7. In the first instance, in view of the finding that has been arrived at by all the three authorities below, to the effect that the debt was not a sticky debt, we are not inclined to interfere since no substantial question of law arise for consideration and no perversity has been shown in the view taken.

8. This apart, learned Counsel for the assessed has submitted on merits, relying upon Commissioner of Income Tax Vs. Ferozepur Finance (P.) Ltd., , that income tax is levied on income and it is of no consequence whether the accounts are maintained on a mercantile system or on a cash basis. If income does not result at all, there cannot be levy of tax.

9. Having gone through the decision cited by learned Counsel, we find that the assessed therein had foregone the debt which was irrecoverable and it was under these circumstances that the High Court of Punjab and Haryana came to the conclusion that income had not accrued to the assessed and income tax could not be levied.

10. Learned Counsel also relied upon Commissioner of income Tax, Tamil Nadu v. Motor Credit Co. P. Ltd. (1980) 127 ITR 572.

This decision holds that merely because the assessed had adopted the mercantile system of accounting it would not necessarily mean that income had accrued to it. This is correct because no final conclusion can be drawn whether income has accrued or not solely on the method of accounting adopted by the assessed. Other facts are also relevant and necessary to be looked into.

11. Finally, learned Counsel relied upon Commissioner of Income Tax Vs. Annamalai Finance Ltd., . According to this decision, it appears that whenever any amount is due and it is not paid at the relevant time, it could be treated as a debt which is not recoverable. We do not think that such a broad proposition can be accepted in every case. It would depend upon the facts of each case.

12. So far as the present case is concerned, the Tribunal found that not only has the assessed received the entire principal amount over a period of time but it has also received a part of the interest. The Tribunal has further noted that in

addition to the above facts, there is nothing to suggest that the financial condition of PPL was such that it was unable to pay its debts. There is nothing on record to suggest that PPL was insolvent-on the contrary, its shares were quoted above par in the market. Taking all these facts into consideration, the Tribunal came to the conclusion that income had accrued to the assessed and that the debt was not a sticky debt. On the material available, we cannot disagree with this conclusion.

13. Learned Counsel for the assessed finally relied upon the Assessment Order passed by the Assessing Officer relevant for the assessment years 1997-98 and 1999-2000. These assessment orders do not advance the case of the assessed since it has been found by the Tribunal, and with which we agree, that interest income had accrued to the assessed during the relevant assessment years.

14. No substantial question of law arises for consideration. The appeal is dismissed.