(2014) 11 GUJ CK 0021

In the Gujarat High Court

Case No : Tax Appeal No. 68 of 2004

Mehta Housing Finance Ltd. APPELLANT

Vs

Jt. C.I.T. RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:

Companies Act, 1956 — Section 143(3), 209, 69

Citation : (2014) 11 GUJ CK 0021

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

Bench : Division Bench

Advocate : Swati Soparkar, Advocate for the Appellant; Mauna M. Bhatt, Advocate for the Respondent

Judgement

K.S. Jhaveri, J.—By way of this appeal, the appellant-assessee has challenged the order dated 31.07.2003 passed in ITA No. 2402/Ahd/99 by the Income Tax Appellate Tribunal, Ahmedabad [for short "the ITAT"].

2. While admitting this appeal on 29.11.2004, the Court had formulated the following substantial questions of law:-

"Whether, in the facts and under the circumstances of the case, the ITAT was right in holding that interest income on the share application money deposited in the bank amounting to Rs. 1,12,801/- was the income accrued to the appellant during the previous year relevant to the assessment year under consideration?"

3. The facts in brief are that the assessee-company got Certificate of Incorporation on 23rd November, 1993. During the previous year relevant to Assessment Year 1995-96 the assessee company invited share application money for allotment of some share at premium. The total amount received by the assessee on account of share application money was Rs. 1,27,93,600/-. The assessee kept the amount in bank. Return of income for 1995-96 was furnished on 30.11.1995 declaring nil income. During the course of Assessment proceedings u/s. 143(3) of the Act, it was revealed that the assessee had shown

nil income as per Profit & Loss account. However, its balance sheet was showing a paid up capital of Rs. 1,22,50,000/- and share application money of Rs. 1,27,93,600/-. In addition to this, an amount of Rs. 71,25,000/- was appearing under the head of "share premium account". On the asset side the assessee had shown an amount of Rs. 1,07,22,600/- under the head "Banker''s to issue Balance". Therefore, the assessee was asked to explain as to whether the balance of Rs. 1,07,22,600/- appealing under the head "Bank''s to Issue balance" was inclusive of interest earned on this deposit or not. The assessee company, gave his explanation. However, the Assessing Officer did not agree with the assessee''s contention and taxed interest of Rs. 1,12,801/- in the Assessment Year 1995-96. Against the said order, the assessee filed an appeal before the CIT(A),Ahmedabad. The CIT(A) vide his order dated 14.08.2000 allowed the said appeal. Against the said order, the respondent herein filed an appeal ITAT. The Tribunal vide its order dated 31.07.2003 allowed the said appeal. Hence, this appeal by the appellant-assessee.

4. Learned advocate for the appellant-assessee has submitted that the Tribunal has committed an error in allowing the appeal. He further submitted that the Tribunal has not appreciated the materials in its true spirit. He relied upon the decision of this Court in the case of Commissioner of Income Tax-IV v. Shree Rama Multi Tech Ltd., reported in [2013] 32 taxmann.Com 296(Gujarat) as well as unreported decision of this court rendered in Tax Appeal No. 315 of 2010 decided on 26.07.2011.

5. We have heard learned advocates for both the parties and perused the material on record. While deciding the Appeal, the Tribunal in paragraph Nos. 10 to 14 of its order observed as under:-

"10. Once it is held that the share application money received by the assessee was for all intents and purposes, except the prohibition put by the provision of section 69 of the Companies Act, the assessee''s money, the natural corollary follows that the income earned on deposits of such money with the banks, if any, also belonged to the assessee and consequently was liable to be taxed in accordance with the system of accounting followed.

11. So far as the present case is concerned, though the assessee might have not withdrawn the deposits and interest thereon but the banks had duly credited the interest upto 31.3.95 because it is mandatory for the banks to provide for interest payable or received on Mercantile System and therefore, the assessee cannot say that the interest upto 31.3.95 was not credited bank on such deposits.

12.1. So far as the assessee''s claim that it was following cash system of accounting is concerned, I am of the opinion, it is absolutely a false claim. Firstly because the assessee itself had in the relevant part of the return (as stated by the AO in para 2 of the assessment order) had stated that method of accounting of Mercantile System only which has not been disputed by the assessee. Secondly, the AO in column No. 8, at first page of the assessment order also has mentioned the method of accounting by the assessee as ''Mercantile'' which also has not been disputed by the assessee either before the CIT[A] or before the Tribunal.

Thirdly, the cause No. 173 at page 44 of the assessee''s Memorandum and Articles of Association, which prescribes the maintenance of accounts reads as under also belies the assessee''s claim:-

"173. The company shall keep at the office or at such other place in India as the Board think fit, proper Books of Account in accordance with section 209 of the act with respect to

(a) All sums of money received and expended by the company and the matters in respect of which the receipts and expenditure take place

(b) All sales and purchases of goods by the company

(c) The assets and liabilities of the company.

There the Board decides to keep all or any of the books of account at any place other than the office of the Company, the Company shall within seven days of the decision file with the Registrar a notice in writing giving the full address of that other place.

The company shall preserve in good order the Books of Accounts relating to period of not less than eight years preceding the current year, together with the vouchers relevant to any entry

Where the Company has a branch office, whether in or outside India, the Company shall be deemed to have complied with these Articles, if proper books of account relating to the transactions effected at the branch office are kept at the branch office and proper summarized returns, made upto date at intervals of not more than three months, are sent by the branch office to the Company, at its office or other place in India, at which the Company''s Books of Account are kept as aforesaid.

The Books of Account shall give a true and fair view of the state of the affairs of the company or branch office as the case may be and explain its transaction. The Books of Account and other Books and papers shall be open to inspection by any Director during business hours"

12.2. From the aforesaid clause it is quite clear that the assessee had maintained its books of account in accordance with the provisions of Sec. 209 of the companies Act according to which, it is mandatory on the part of the Company to maintain the books of account on Mercantile (accrual) basis and according to double entry system. The assessee has not furnished any evidence to the contrary except the claim the interest was offered for taxation in the AY 1996-97.

13. In view of the above provision of companies Act, assessee''s plea that it was maintaining cash accounting system also do not hold-good and the same is

rejected.

14. In view of the above discussions and totality of the facts and circumstances of the case, I am of the opinion that interest accrued on Fixed Deposits upto 31.3.95 was legally assessable in the hands of the assessee company in AY 1995-96 and AO was quite justified in assessing the same on accrual basis in AY 1995-96. The order of the CIT(A) is therefore, set a side and that of the AO is restored."

6. In view of the above, we are in complete agreement with the view taken by the Tribunal. The Tribunal has given cogent and convincing reasons in arriving at the conclusion. Therefore, the present appeal deserves to be dismissed.

7. The decisions relied upon by learned advocate for the appellant will not apply to the facts of this case.

8. For the foregoing reasons, the present appeal is dismissed. Accordingly, the question posed in this appeal is answered in favour of the revenue and against the assessee.