

(2001) 02 MAD CK 0079

In the Madras High Court

Case No : Writ Petition No. 5399 of 1997

Seahorse Industries Ltd., formerly known as Simco
Engineering Limited

APPELLANT

Vs

The Commissioner of Income Tax, Tamil Nadu-I, 121,
Nungambakkam High Road, Chennai-34 and Another

RESPONDENT

Date of Decision : 09-02-2001

Acts Referred:

Income Tax Act, 1961 — Section 194

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 16, 17, 18

Citation : (2001) 02 MAD CK 0079

Hon'ble Judges : R. Jayasimha Babu, J

Bench : Single Bench

Advocate : A.L. Somayaji, for S. Raghavan, R. Sankaranarayanan and R.K. Krishnakumar, for the Appellant; Chitra Venkataraman, Sr. Central Govt. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

1. Petitioner is a party to a scheme formulated by the Board for Industrial and Financial Reconstruction. A scheme was sanctioned by the Board

for the rehabilitation of the industry owned by petitioner company which had been declared sick in the year 1992. The scheme is dated 1.8.94. In

that scheme para 7.5 deals with Non-banking Financial Companies. Scheme requires the company to settle the dues to those N.B.F.Cs at Rs.1.78

lakhs on a one-time settlement basis.

2. The petitioner has averred in the affidavit that pursuant to the order of BIFR one-time settlements were effected with all the NBFC's, from

whom monies had been borrowed by the petitioner company and in respect of which interest had been credited in the books, but which had not

been paid, part of the reason for the sickness being the liabilities of the company being far in excess of assets. By the one-time settlement that was effected the company was relieved of the obligation to pay interest and in fact no interest has been paid to any of the NBFC's who have also acted in accordance with the scheme settled by the BIFR and have accepted the payment in accordance with that scheme. One such NBFC has addressed a letter dated 5.11.94 to the company confirming that it is accepting the payment of Rs.6 lakhs in full and final settlement of all the amounts due to it even though the total amount outstanding to it was Rs.14.59 lakhs.

3. In respect of the interest credited to the account of the lenders in the books of the company, tax was required to be deducted at source. The amount so required to be deducted was also required to be credited to the Government. That was not done by the petitioner. After the order of BIFR at the insistence of the authorities, the petitioner paid a sum of Rs.56,96,798 and also claimed a sum of Rs.22,80,363 that sum being the amount of TDS which was prior to the order of BIFR payable, but which sum, according to the petitioner, is no longer payable by reason of the interest in respect of which the tax was required to be deducted, itself having been waived by the order of the BIFR which order was binding on the persons to whom such interest was payable. The petitioner, it is stated, has filed a separate petition for refund of that amount.

4. In the order of assessment, the petitioner was directed to pay interest on the amount of the TDS which it was required to deduct from the amount of interest payable by it to its creditors. Penalty was also levied for having failed to remit those amounts in time. The levy so made on the petitioner for the assessment years 1990-91 to 1994-95 was taken up by the petitioner in revision before the Commissioner. The Commissioner waived the penalty, but held that the demand for interest, could not be deleted.

5. Tax on the interest paid by a borrower to his lender is required to be paid, as the interest so paid by the borrower is considered as income in the hands of the lender and is an item of income in respect of which tax is payable subject to the other requirements of the Income Tax Act being fulfilled regarding the assessability of the income to tax. The tax is made payable by the borrower after deducting the same from interest, thus

enabling the revenue to secure the amount immediately at the time of credit of interest itself. The amount so collected by the revenue is to be given

credit to in the assessment of the lender or refunded to the lender if he is not liable to pay income tax on that sum for any reason.

6. When it was clear from the facts before the Commissioner that the borrower had been relieved of the obligation to pay interest to its lender by

reason of a scheme, which binds the borrower as also the lender that scheme having been framed by an authority duly constituted under the statute

after hearing of parties it would be wholly unjust for the revenue to shut its eyes to the reality, and merely insist on compliance with the form.

While it is true that it is the obligation of the borrower to deduct tax on the interest payments made or credited by it and remit it to the Government,

while considering the question as to whether interest should be levied for the delay in making the payment, consideration of the liability, if any, of

the borrower to pay interest is not to be completely ruled out especially where the order of the BIFR was available at the time when the

Commissioner made his order and which order of the BIFR clearly showed that there was one-time settlement between the assessee/borrower

and its NBFC/lenders at a figure far below the amount of the principal itself and which clearly did not require the borrower to pay any interest.

7. The Sick Industries (Special Provisions) Act is a special enactment meant to relieve industrial sickness. The authorities under the Income Tax

Act are not to altogether exclude from their consideration, the proceedings taken under the Sick Industries Act to rehabilitate the sick industrial

company. The statutory functionaries must act in a manner which is reasonable and must take due note of purpose of the law which they are

required to administer as also the purpose of the other enactment under which scheme concerning the assessee have been formulated.

8. Having regard to the facts of this case, it is clear that the Commissioner erred in not directing the deletion of the demand for interest on the Tax

Deducted at source, as no interest has in fact been paid by the assessee and the question of paying any tax on amounts that are not payable as

interest does not arise. The impugned order of the Commissioner is, therefore, set aside insofar as it requires the petitioner to pay interest. The

petition is accordingly allowed.