
(2004) 10 AHC CK 0023

In the Allahabad High Court

Case No : IT Ref. No. 37 of 1984 & IT Reference No. 37 of 1984 12 October 2004

U.P. State Brassware Corpn. Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 12-10-2004

Acts Referred:

Income Tax Act, 1922 — Section 10(2)

Income Tax Act, 1961 — Section 143(3), 147, 148, 154, 22

Citation : (2005) 194 CTR 353 : (2005) 277 ITR 40

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Division Bench

Advocate : Vikram Gulati and Dhruva Narayana, for the Appellant; A.N. Mahajan, for the Respondent

Judgement

R.K. Agrawal, J.—The Tribunal, Delhi, has referred the following three questions of law under s, 256(1) of the IT Act, 1961, hereinafter referred to as the Act, for opinion to this Court :

"1. Whether, on facts and in law, the Tribunal was justified in confirming the action of the CIT(A) who upheld the action of the ITO in taking action u/s 148 of the IT Act, 1961.

2. Whether, on facts and in the circumstances of the case, the Tribunal was justified in upholding the action of the CIT(A), who confirmed the addition of Rs. 10,417 made by the ITO u/s 143(3)/148 on account of interest payable to U.P. Government on seed loan taken by the company.

3. Whether, on facts and in law and in the circumstances of the case, the Tribunal was legally right in holding that the interest payable to U.P. Government on seed loan taken was not deductible from the interest earned from the investments of the same loan by the appellant."

2. Briefly stated, the facts giving rise to the present reference are as follows :

The applicant is a company incorporated under the provisions of the Companies Act, 1956. It is a Government of U.P. undertaking. For the asst. yr. 1977-78 for which the previous year is the financial year, the ITO completed the assessment vide order dt. 31st Dec., 1977, determining the total income at Rs. 1,40,552. In the said assessment the ITO while computing interest under the head "Income from other sources" allowed the deduction of Rs. 10,417 being the amount of interest paid by the applicant to the U.P. Government in respect of "Seed Loan for Industrial Estate". Subsequently, he came across a decision of the Calcutta High Court in the case of Commissioner of Income Tax (Central) Vs. New Central Jute Mills Co. Ltd., and on the basis of the information as to the legal proposition laid down in the said ruling, he came to believe that as a result of allowance of deduction of interest expenditure of Rs. 10,417 in the original assessment income to that extent had escaped assessment. He issued notice u/s 148 of the Act. In response to the said notice, the applicant filed the return of income. In the reassessment proceeding, the ITO withdrew the deduction of Rs. 10,417 resulting in the taxable income assessed at Rs. 1,50,970. The reassessment order has been upheld by the CIT(A) as also by the Tribunal, Delhi.

3. We have heard Sri Vikram Gulati, learned counsel for the applicant, and Sri A.N. Mahajan, learned counsel appearing for the Revenue.

4. The learned counsel for the applicant submitted that the ITO had merely changed his opinion on the basis of the facts already on record at the stage of original assessment and, therefore, reopening of original assessment was not valid. He further submitted that as the applicant was carrying on business during the assessment year in question the amount of interest paid by it to the State Government towards "Seed Loan for Industrial Estate" was liable for deduction. In support of aforesaid submissions, he has relied upon the following decisions :

1. State of Madras Vs. G.J. Coelho,
2. India Cements Ltd. Vs. Commissioner of Income Tax, Madras,
3. Baldeo Ram Salig Ram Ltd. Vs. Income Tax Officer,
4. Commissioner of Income Tax Vs. Tarai Development Corporation Ltd.,
5. Commissioner of Income Tax Vs. Kalvinator of India Ltd.,

5. Sri A.N. Mahajan, learned standing counsel appearing for the Revenue, however, submitted that u/s 57 of the Act deduction is permissible from the income assessed under the head "Income from other sources" which has been laid out wholly and exclusively for the purposes of making or earning such income. As the applicant had paid interest to the State Government on "Seed Loan for Industrial Estate" when that industrial estate has not yet come into existence and no such income of the industrial estate has been assessed, the deduction could not have been allowed. He further submitted the ITO was fully justified to take proceedings u/s 147 of the Act as the deduction had been wrongly allowed to the applicant in view of the decision of the Calcutta High

Court in the case of New Central Jute Mills Co. Ltd. (supra). In support of his aforementioned submission he has relied upon the following decisions :

1. CIT v. New Central Jute Mills Co. Ltd. (supra)

2. M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another,

6. Having heard the learned counsel for the parties we find that admittedly the ITO had allowed deduction of Rs. 10,417 which was towards the interest paid to the State Government in respect of "Seed Loan for Industrial Estate" from the interest income computed under the head "Income from other sources". In the case of New Central Jute Mills Co. Ltd. case (supra), the Calcutta High Court has held that interest paid to the Government towards the loan obtained for erection of chemical plant pending starting of business cannot be allowed as revenue expenditure. The principles laid down by the Calcutta High Court do constitute information on point of law which should be taken into consideration by the ITO in forming his belief that the income to that extent had escaped assessment to tax.

7. In the case of Baldeo Ram Salig Ram Ltd. (supra), this Court has held that the ITO cannot be permitted to rectify the mistake committed by him in granting higher depreciation on lifts under s, 147(b) of the Act. He could have rectified the mistake u/s 154 of the Act. This Court has held that there was no information received by the ITO on the basis of which he could have reopened the assessment.

8. In the case of the Kelvinator of India Ltd. (supra), the Delhi High Court has held that if the ITO does not possess the power of review, he cannot be permitted to achieve the said object by taking recourse to initiating a proceeding for reassessment.

9. In the case of Phool Chand Bajrang Lal (supra), the apex Court has held that an ITO acquires jurisdiction to reopen an assessment u/s 147(a) only if, on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons to believe which he must record that by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profits or gains chargeable to Income Tax has escaped assessment. He may start reassessment proceedings either because some fresh facts had come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but one of acting on fresh information.

10. In the case of Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi, , the apex Court has held that Section

147(b) of the Act is read as referring to "information" as to law; what is contemplated is information as to the law created by a formal source. It is law, we must remember, which, because it issues from a competent legislature or a competent judicial or quasi-judicial authority, influences the course of the assessment and decides any one or more of those matters which determine the assessee's tax liability. The apex Court has held that the declaration or exposition set forth in judgment of a Court or the order of a Tribunal in itself bears the character of law.

11. Thus, if on the plain language of the Section 57 of the Act, an expenditure which has not been incurred exclusively for earning the income which is to be assessed under the head "Income from other sources", the deduction has been allowed and subsequently, in view of the law laid down by one of the High Courts, the ITO gets the information to form the opinion on point of law, in that event, it cannot be said that the proceeding u/s 147(b) of the Act cannot be initiated. In this view of the matter the Tribunal has rightly upheld the initiation of the proceedings u/s 147(b) of the Act.

12. So far as the question of deduction of interest expenditure of Rs. 10,417 is concerned, admittedly, the industrial estate had not come into existence during the assessment year in question. The applicant had paid interest in respect of "Seed Loan for Industrial Estate" to the State Government. It was not expenditure for earning interest. In the case of G.J. Coelho (supra), the apex Court has held that in principle there is no distinction between interest paid on capital borrowed for the acquisition of a plantation and interest paid on capital borrowed for the purpose of an existing plantation and both are for the purposes of the plantation. The aforesaid decision is of no help to the applicant.

13. In the case of India Cements Ltd. (supra), the apex Court has held that the amount spent towards stamp duty, registration fees, lawyer's fees, etc., for obtaining a loan of Rs. 40 lakhs from the Industrial Finance Corporation secured by a charge on its fixed assets was not in the nature of capital expenditure and was laid out or expended wholly and exclusively for the purpose of the business and was, therefore, allowable as a deduction under s. 10(2)(xv) of the IT Act, 1922. The apex Court has further held that the act of borrowing money was incidental to the carrying on of business; the loan obtained was not an asset or an advantage of enduring nature, the expenditure was made for securing the use of money for a certain period, and it was irrelevant to consider the object with which the loan was obtained.

14. In the case of Tarai Development Corpn. Ltd. (supra), this Court has held that the moneys borrowed for the purpose of carrying on business could be spent by the assessee on any account, either capital or revenue, and the interest paid on such" borrowed capital is liable for deduction,

15. We find that in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd., Madras Vs. Commissioner of Income Tax, Madras, , the apex Court has held as

follows :

"The basic proposition that has to be borne in mind in this case is that it is possible for a company to have six different sources of income, each one of which will be chargeable to Income Tax. Profits and gains of business or profession is only one of the heads under which the company's income is liable to be assessed to tax. If a company has not commenced business, there cannot be any question of assessment of its profits and gains of business. That does not mean that until and unless the company commences its business, its income from any other source will not be taxed. If the company, even before it commences business, invests the surplus funds in its hands for purpose of land or house property and later sells it at profit, the gain made by the company will be assessable under the head "Capital gains". Similarly, if a company purchases a rented house and gets rent, such rent will be assessable to tax u/s 22 as income from house property, Likewise, a company may have income from other sources. It may buy shares and get dividends. Such dividends will be taxable u/s 56 of the Act, The company may also, as in this case, keep the surplus funds in short-term deposits in order to earn interest. Such interest will be chargeable u/s 56 of the Act."

The apex Court has further held that the question of adjustment of interest payable by the company against the interest earned by it will depend upon the provisions of the Act. The expenditure would have been deductible as incurred for the purpose of business if the assessee's business had commenced. The assessee may be entitled to capitalize the interest payable by it but what the assessee cannot claim is adjustment of this expenditure against interest assessable u/s 56. Section 57 of the Act sets out in its Clauses (i) to (iii) the expenditures which are allowable as deduction from income assessable u/s 56.

The apex Court has further held as follows ;

"There are specific provisions in the IT Act for setting off loss from one source against income from another source under the same head of income (Section 70), as well as setting off loss from one head against income from another (Section 71). In the facts of this case the company cannot claim any relief under either of these two sections, since its business had not started and there could not be any computation of business income or loss incurred by the assessee in the relevant accounting year. In such a situation, the expenditure incurred by the assessee for the purpose of setting up its business cannot be allowed as deduction, nor can it be adjusted against any other income under any other head. Similarly, any income from a non-business source cannot be set off against the liability to pay interest on funds borrowed for the purpose of purchase of plant and machinery even before commencement of the business of the assessee.

It has been argued that the source from which the company has earned interest is borrowed capital. The company has to pay interest to its creditors on the same borrowed capital. Having regard to the identity of the fund on which interest is

earned and interest is payable, the company should be allowed to set off its income against interest payable by it on the same fund, We are of the view that no adjustment can be allowed except in accordance with the provisions of the IT Act. However desirable it may be from the point of view of equity, this adjustment cannot be made unless the law specifically permits such adjustment."(Emphasis, italicized in print, supplied)

16. Thus, the interest paid on "Seed Loan for Industrial Estate" cannot be allowed as a deduction u/s 57 of the Act as the same has not been expended for earning the interest which has been assessed u/s 56 of the Act under the head "Income from other sources".

17. In view of the foregoing discussion we answer all the three questions of law referred to us in the affirmative, i.e., in favour of the Revenue and against the assessee. However, there shall be no order as to costs.