

A.R. Enterprises Vs. Assistant Commissioner of Income

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Court : Income Tax Appellate Tribunal ITAT Chennai

Decided On : Sep-30-2004

Reported in : (2006)99TTJ(Chennai)85

Judge : N Vijayakumaran, C Poojari

Appellant : A.R. Enterprises

Respondent : Assistant Commissioner of Income

Judgement :

1. All these three appeals filed by the assessee arise out of different orders of the CIT(A) wherein certain common grounds are involved.

Hence, these appeals were clubbed together, heard together and are being disposed of by this common consolidated order for the sake of convenience.

2. The first common ground in ITA Nos. 532/Mds/2001, 893 & 894/ Mds/2003 is that the CIT(A) erred in confirming the order of the AO treating the interest income from fixed deposit under the head 'Income from other sources'.

3. The assessee has received interest on bank deposits for the asst.

yrs. 1997-98, 1998-99 and 1999-2000 and the assessee has treated this interest as income from business for the reason that the FD was made in the bank for the purpose of obtaining letter of credit as the main business of the assessee was import of timber and allied products and for obtaining a letter of credit, the bankers

of the assessee, viz., Bank of Baroda, have insisted on margin money for which the assessee was required to make short-term deposit. On assessment, the AO treated the interest received from the bank deposit as income from other sources instead of income from business. On appeal, the CIT(A) has confirmed the action of the AO. Hence, the assessee is in appeal before us.

4. The learned Counsel for the assessee submitted that the assessee has made deposit in bank for the purpose of obtaining a letter of credit as insisted by the bankers of the assessee for the purpose of import of timber which was its main business. He drew our attention to the object clause of the partnership deed which reads as follows : The main business of partnership shall be that (of) import of timber and allied products, general trading timber, plywood and allied products, drugs, Pharmaceuticals and exports and any other business with the mutual consent of the partners, whereas the partnership is free to do any lawful business as may be mutually agreed upon between the partners from time to time.

The learned Counsel for the assessee further submitted that most of the purchase of timber was from foreign countries and import of timber could be done only after obtaining letter of credit and for this purpose, the bank has insisted for deposit of margin money in terms of short-term deposit and only on this deposit, the assessee has received the interest and, therefore, the interest income from such deposit should be treated as business income. He also drew our attention to the copy of sanction letter bearing No. ADV 649, dt. 23rd Dec, 1994, from Bank of Baroda which is placed at page Nos. 13 to 16 of the paper book-II and the letter from the bank which is placed at p. 32 of paper book-I and submitted that the bank has insisted on deposit of 25 per cent cash margin.

5. He further submitted that the case law relied on by the AO in the case of Tuticorin Alkali Chemicals & Fertilisers Ltd. is not applicable to the facts of the case of the assessee. In the case before the Hon'ble Supreme Court, it was held that the interest income earned by the assessee from the deposit of surplus funds before commencement of the business should be treated as income from other sources instead as business income and cannot be set off against interest paid. In the case before us, no surplus fund was deposited in the bank and the deposit

was made due to the insistence of the bank for issue of letter of credit for the purpose of business. He also submitted that the case law relied upon by the CIT(A) in the case of South India Shipping Corporation Ltd. v. CIT , surplus fund was deposited and there was no mandatory requirement to make deposits.

6. On the contrary, the learned Departmental Representative strongly relied on the orders of the authorities below on this issue.

7. We have heard the rival submissions and perused the material on record. The assessee has made a short-term deposit with the bank. The FD was said to have been made for the purpose of opening of letter of credit and for getting other benefits which are necessary requirements to enable the assessee to make export. From this, it is clear that the interest received on the short-term deposits though can be attributed to the business, cannot be treated as income which is derived from business. Even assuming that the bank had insisted for making short-term deposit for obtaining letter of credit, it cannot be said that this income was derived from business. We have carefully gone through the terms and conditions of the sanction letter placed at pp.

13 to 16 of paper book-II and also the letter from bank placed at p. 32 of paper book-I and we do not find any mention in the sanction letter insisting the assessee to make short-term deposit of 25 per cent of the cash credit limit for the purpose of opening of letter of credit. Even the letter bearing No. IBB/IMP/17/27, dt. 1st June, 2004, does not indicate that the bank has compelled the assessee to make FD for grant of letter of credit. In our opinion, there was no compulsion or insistence from the bank for making any FD towards opening of letter of credit. The condition for sanction was hypothecation of stock of timber including stock-in-transit and 25 per cent of cash margin and commission at fixed rate and the letter of credit for a period of 180 days. The letter of credit was sanctioned on the basis of the business of the assessee, creditworthiness and security offered. Hence, the interest received from the deposit cannot be treated as earned from business as there was no nexus between the FD and the letter of credit sanctioned by the bank. As the assessee is not in the business of investment and so long as the assessee has admitted that it is in the business of timber, the interest income

cannot be treated as business income. The interest income has only proximity with the deposit and not with the business. In view of the foregoing discussions, we hold that the interest from short-term deposit cannot be treated as income from business. Accordingly, we uphold the order of the CIT(A) on this issue and reject the ground taken by the assessee.

8. The next ground in ITA No. 532/Mds/2001 relates to non-allowance of deduction under Section 80HHC before set off of brought forward loss.

The CIT(A) has held that deduction under Section 80HHC is allowable only after setting off of the brought forward loss as the provisions of Section 80AB are applicable.

9. This issue stands settled against the assessee by the judgment of Hon'ble Supreme Court in the case of IPCA Laboratory Ltd v. Dy. CIT , wherein it was held that Section 80AB has been given an overriding effect over all other sections in Chapter VI-A. Section 80HHC does not provide that its provisions are to prevail over Section 80AB or any other provisions of the Act and Section 80HHC would be governed by Section 80AB and Section 80AB makes it clear that computation of income has to be done in accordance with the provisions of the Act. When the income is computed in accordance with the provisions of the Act, then not only profit but also loss will have to be taken into consideration. Respectfully following the ratio laid down by the Hon'ble apex Court (supra), we reject this ground.

10. The next ground in ITA No. 894/Mds/2003 relates to treating of interest income received from M/s Sudarshan Metal Caps and M/s Srikar Metal Caps as income from other sources instead of income from business.

11. The assessee has received interest from the above two companies towards amounts advanced. On assessment, the AO added this as income from other sources. Aggrieved by this, the assessee went in appeal before the CIT(A) who has confirmed the order of the AO.12. The learned Counsel for the assessee submitted that the amount earned by the assessee as interest was in the ordinary course of business and the partnership deed does not prohibit the assessee to carry on money-lending business. He further submitted that the assessee has

advanced Rs. 25 lakhs to M/s Sudarshan Metal Caps and Rs. 11 lakhs to M/s Srikar Metal Caps as loan in the ordinary course of business.

The interest earned in the ordinary course of money-lending should be treated as income from business.

13. On the contrary, the learned Departmental Representative strongly supported the orders of the authorities below.

14. We have heard the rival submissions and perused the record. A careful reading of the partnership deed extracted above reveals that the object of the assessee's business is not money-lending. The assessee earned the interest not in the ordinary course of business.

Though the partnership deed does not prohibit such activity, it cannot be said that money-lending is the business of the assessee. It is only when the assessee has carried on the money-lending business in the ordinary course of business, then only such earning of interest can be treated as income from business. When the assessee's main business is trading in timber, machinery, Pharmaceuticals only, money-lending does not constitute the business of the assessee at all.

15. The meaning of the words "ordinary course of business" has wide import. It would depend upon the volume of the business, frequency of the transaction, continuity and the need under which the transaction was carried on. The amounts advanced were short-term advances and they were advanced to only two parties. There is no document stipulating the repayment or payment of interest and even in the object clause, there is no mention of money-lending business. The business implies "continuous" activity in carrying on a particular trade or vocation. It may also include an activity which may be called 'quiescent'. It is essential for the assessee to prove that the activity was carried on continuously, systematically by application of his labour, skill and money to earn the income. There must be a proof of continuous activity in carrying on a particular trade. On the facts of this case, it is clearly found that the activity indulged by the assessee was one-time transaction and there was no continuous activity in dealing in money-lending activity by the assessee in the course of its activity of the business.

16. Even if it is admitted that single transaction can be regarded as business if there are indications of trading activity, we see no systematic or organised activity of money-lending has been carried on by the assessee. There were only two isolated transactions which were not continuous activity in dealing with money-lending and before or after these two transactions, there were no other transactions of this nature and money-lending business was not carried on in pursuance of the object clause. Merely because the assessee has advanced surplus funds or excess funds to other firms, it cannot be held that money-lending was the business carried on by the assessee in the ordinary course of its business. Hence, as the assessee has not carried on money-lending business and money-lending was not stock-in-trade of the assessee, the assessee cannot claim that money was advanced in the ordinary course of its business. In view of the above discussions, we reject the claim of the assessee and hold that interest earned from the advance made by the assessee shall be assessable as interest income under the head "Other sources".

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