

Additional Commissioner of Vs. Ge Capital Transportation

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Feb-24-2006

Reported in : (2006)101TTJ(Delhi)304

Judge : P Parashar, R Singh

Appellant : Additional Commissioner of

Respondent : Ge Capital Transportation

Judgement :

1. The Revenue is in appeal for asst. yrs. 1996-97, 1997-98 and 1998-99 whereas the assessee has filed cross-appeal for asst. yr. 1998-99. All these matters were heard together and are being decided by a common order for the sake of convenience.

Interest-tax Appeal Nos. 38 and 39/Del/2001 (Revenue's appeal for asst.

yrs. 1996-97 and 1997-98): 2. Ground Nos. I(i) to I(iii), common in both the appeals are as under : 1(1). On the facts and circumstances of the case, the learned CIT(A) erred in holding that interest on securities amounting to Rs. 3.59 crores (Rs. 5.43 crores in asst. yr. 1997-98) is not chargeable under the IT Act.

1(11). Learned Departmental Representative-CIT(A) ought to have appreciated that CBDT vide its notification dt. 11th Sept., 1995 exempts banking company to which Banking Regulations Act, 1949 applies from the levy of interest-tax in respect of income from interest on securities.

1(iii). The learned Departmental Representative-CIT(A) ought to have appreciated that assessee is not a banking company to which the Banking Regulations Act applies.

3. Smt. Sangeeta Gupta, CIT-Departmental Representative supported the order of AO and challenged the order of learned CIT(A) for both the assessment years in question. Learned counsel for the assessee, Shri M.S. Syali, on the other hand, supported the order of the learned CIT(A). He also placed reliance on the order of Tribunal Special Bench in the case of Housing & Urban Development Corporation Ltd. v. Jt. CIT, dt. 25th Nov., 2005 rendered by the Tribunal, Delhi Bench "E".

4. We have considered the entire material on record. The assessee had made investment in Government securities in the shape of Kisan Vikas Patras (KVP) and debentures, etc. It had not included the income from these securities because the same was not in the nature of interest on loans and advances as per the assessee. The AO was, however, of the view that the investment made by the assessee in Government securities was chargeable to Interest-tax Act. He, therefore, added Rs. 3,59,80,028 for asst. yr. 1996-97 and Rs. 5,43,85,836 for asst. yr.

1997-98 as chargeable interest under the Interest-tax Act. Para 2.3 of AO's order for asst. yr. 1996-97 is as under: The present version of the Interest-tax Act, 1974 operative w.e.f...does not include the exclusionary provisions, mentioned above. In view of this it is clear that interest on securities is chargeable to interest-tax. The amount of Rs. 3,59,80,028 (Rs. 3,58,33,255 + Rs. 1,46,773) being interest on securities will be added to the computation of chargeable interest.

4.1 Similarly for asst. yr. 1997-98 also the AO adopting the same approach made addition of Rs. 5,43,85,836.

5. In appeal, the learned CIT(A) decided the appeals of both the years by a common order dt. 25th Jan., 2001. After considering the provisions of Interest-tax Act in detail, he deleted the addition by observing as under: 4.5 I have considered the facts of the case and find that the decision of the Madras High Court in CIT v. Lakshmi Vilas Bank Ltd. (supra) is very much applicable to the case of the

appellant. Like banks, the appellant being a non-banking company, has invested money in debentures, which are shown as 'investments'. So, the interest on such investment falls outside the purview of the Interest-tax Act.

So, the interest income of Rs. 5,43,85,836 for the asst. yr. 1997-98 is to be deleted from the chargeable interest and the appellant gets relief accordingly. For asst. yr. 1996-97 also I find that the AO has not given any other reasoning except what is stated in the order for asst. yr. 1997-98. So, following the same reasoning, inclusion of Rs. 3,59,80,028 for asst. yr. 1996-97 is also deleted by me and the appellant gets relief accordingly.

6. The issue came before the Special Bench of the Tribunal in the case of HUDCO (supra) and after considering the various decisions and circular letters of the CBDT, the Bench held that the deposits in the form of securities and bonds cannot be considered as loans and advances and as such interest thereon shall be outside the scope of interest defined under Section 2(7) of the Interest-tax Act. Relevant observations of the Bench as given in para 22 are as under : 22. From the foregoing discussion we are of the considered view that despite similarities, the two expressions "loans" and "deposits" are to be taken different and the distinction can be summed up by stating that in the case of loan, the needy person approaches the lender for obtaining the loan therefrom. The loan is clearly lent at the terms stated by the lender. In the case of deposit, however, the depositor goes to the depositee for investing his money primarily with the intention of earning interest. In view of his legal position, it has to be held that interest on deposits representing investment of surplus funds would also not fall under the definition of interest as given in Section 2(7) of the Act and as such would not be liable to interest-tax. The answer to the question under reference in our humble opinion is that investments made by way of short-term deposits and also in the form of securities and bonds cannot be considered as loans and advances and as such interest thereon shall be outside the scope of "interest" defined under Section 2(7) of the Act.

7. Thus, issue stands fully covered in favour of the assessee by the order of the Special Bench. The learned Departmental Representative has not been able to

point out any other contrary decision and, therefore, respectfully following the decision of the Special Bench (supra), we uphold the order of learned CIT(A) in both the appeals. Grounds fail.

8. Ground No. 2 in appeal Nos. 38 and 39/Del/2001 and the only ground taken by the Revenue in appeal No. 18/Del/2002 are identical grounds which challenge the order of learned CIT(A) in deleting the addition relating to income from hire charges transactions, 9. The AO has considered the issue in asst. yr. 1996-97 in detail and held that the transactions entered into by the assessee-company with the hirers were not in the nature of genuine hire-purchase transactions but were financing transactions. In asst. yr. 1996-97 he has made the following observations in this regard : 3. Income from hire-purchase transaction : In the notes below the computation, it has been stated that 'hire charges revenue on deferred sales Rs. 43,42,81,746 being not covered by Section 5 of the Interest-tax Act, 1974 is not included above. The assessee-company has also filed the details of hire-purchase income.

From the details it is observed that the following amount which is otherwise chargeable to interest-tax has not been included in the computation : In its written submission filed on 19th March, 1999, the counsel for the assessee has put various arguments and tried to distinguish the hire-purchase from the finance transaction. It had also referred to the decision of the Hon'ble Supreme Court in the case of Sundaram Finance Ltd. v. State of Kerala (1966) 17 STC 489 (SC) and CBDT Circular No. 760, dt. 13th Jan., 1998. The case law referred by the assessee was examined by the CBDT and vide Circular No. 760, dt.

13th Jan., 1998 has observed that the AO may be advised to examine each transaction in the above light and charge interest-tax in such of those transactions which are not in the nature of hire-purchase.

The case of the assessee-company was carefully examined and its transactions were not found in the nature of genuine hire-purchase transaction.

11. The learned CIT(A) decided the appeal for asst. yrs. 1996-97 and 1997-98 by a common order. After considering the nature of the transactions in the light of

various clauses of the agreement and after considering the circular of the CBDT, as well as the decision of Hon'ble Supreme Court in the case of Sundaram Finance Ltd. v. State of Kerala (1966) 17 STC 489 (SC) and the decision in the case of Instalment Supply (P) Ltd. v. Union of India 125 STC 489, in detail, he has observed that the transactions entered into by the assessee with the customers were only hire-purchase transactions and it could not be held that the transactions were financing transactions. He, therefore, deleted the addition of Rs. 43,54,00,295 for asst. yr. 1996-97 and Rs. 59,90,22,359 for asst. yr. 1997-98 by observing as under : 6.13. I have considered the aforesaid facts of the case and held that the AO is not justified in bringing the income from hire-purchase transactions within the purview of interest-tax. The income received from such hire-purchase transaction cannot be termed as interest income and cannot be subject to interest-tax because all the three steps brought out by the CBDT's Circular No. 760, dt. 13th Jan., 1998 are examined in this case and tests laid down by the Hon'ble Supreme Court in the case of Sundaram Finance v. State of Kerala (supra) are also applied. It is found that the appellant-company is not advancing loans/finances to the customers but was purchasing the vehicles by paying the entire money and the customer was paying back to the appellant in certain fixed instalments. Moreover, the Authorised Representative has proved before me that the appellant-company has the right to repossess the stock in case of default in payment and such stock is kept in godown hired by the appellant. Therefore, it cannot be held that the transaction is merely a finance transaction and the income accruing from it is subject to tax as per the provisions of Section 2(7) of the Interest-tax Act. So, the additions of Rs. 43,50,00,295 for asst. yr. 1996-97 and Rs. 59,90,22,359 for asst. yr. 1997-98 are deleted by me from the purview of interest-tax and the appellant gets relief accordingly.

12. Before us, the learned CIT-Departmental Representative, while challenging the findings of the learned-CIT(A), placed reliance on the order of Tribunal, Agra Bench, reported in S.E. Investments Ltd. v.Asstt. CIT (2004) 83 TTJ (Agra) 809 : (2004) 88 ITD 620 (Agra).

According to her, the transaction was in the nature of financing transaction. She supported the order of AO.13. Learned counsel for the assessee, on the other

hand, submitted that the transactions were in the nature of hire-purchase transactions and not in the nature of financing transactions or transactions of loan and advance. The learned counsel distinguished the decision of Agra Bench of Tribunal by saying that in that case statements of customers were recorded who deposited that the assessee-company had advanced loans for purchasing the vehicles. He further pointed out that the invoices were directly issued by the company in the name of hirers and thus the vehicles stood owned by the hirers whereas in the case of the present assessee, the company was the owner and the invoices were issued in its name and not in the name of the hirers. He, thus, distinguished the decision of Agra Bench of Tribunal reported in (2004) 83 TTJ (Agra) 809 : (2004) 88ITD 620 (Agra) (supra).

14. Learned counsel for the assessee, on the other hand, placed reliance on the order of Lucknow Bench of the Tribunal in the case of Commercial Motors Finance Ltd. v. Asstt. CIT (2002) 76 TTJ (Lucknow) 918 : (2002) 82 ITD 176 (Lucknow).

15. On going through the order of learned CIT(A), it is found that he has compared the features of hire-purchase transactions and features of financing transactions and also considered Clause 4 and clauses 11, 14 of the agreement. He has also considered the basic features stated in the case of Sundaram Finance (supra) and Instalment Supply (P) Ltd. (supra) and after testing the facts on the test of the proposition laid down in these two decisions and also after taking into consideration the relevant Board circular he found that the assessee was the owner of the vehicles. Thus, the decision of Agra Bench of Tribunal reported in (2004) 83 TTJ (Agra) 809 : (2004) 88 ITD 620 (Agra) (supra) is totally distinguishable because in that case the assessee was not found to be the owner of the vehicles but the hirers were found to be the owners of the vehicles. The decision of Lucknow Bench of the Tribunal in the case of Commercial Motors Finance Ltd. (supra) is fully applicable in the present case because in that case also the assessee was held to be the owner of the vehicles on examination of the relevant clauses of the agreement. Thus, on facts the present case is fully covered by the decision of Tribunal, Lucknow.

16. In view of the above, we uphold the order of learned CIT(A) and reject the ground taken by the Revenue in its appeals for the assessment years in question.

17. Ground Nos. 1 and 4 are general in nature and do not require any specific adjudication.

That on the facts and circumstances of the case and in law, the learned CIT(A)-XV has erred in holding that (i) Interest earned on investments amounting to Rs. 4,63,39,567 is interest chargeable to interest-tax.

(ii) The investments in Kisan Vikas Patras, Indira Vikas Patras, other Government securities and debentures are in the nature of loans or advances.

19. The learned CIT(A) took a different view in the assessment year in question and confirmed the addition made by the AO on account of interest earned by the assessee from investments in Government securities and debentures. His observations are as under : I find that the Chambers Dictionary has given the meaning of 'debenture' as 'a written acknowledgement of a debt; a security issued by a company for money borrowed on the company's property, having a fixed rate of interest, and usually fixed redemption rates'. This definition leaves no scope for any ambiguity that a debenture is in the nature of a loan or advance, and interest on debentures has to be included as chargeable interest. The AO has, to my mind, correctly pointed out that after the amendment in the Act w.e.f. 1st Oct., 1991, the interest on debentures, bonds and securities has been brought within the ambit of 'chargeable interest'. Clearly, interest on Kisan Vikas Patras and Indira Vikas Patras is a part of chargeable interest as the amounts in the nature of advances given to the Government. In fact, the interest on the Kisan Vikas Patras and Indira Vikas Patras is specified very categorically. Accordingly, I am of the opinion that the interest on Government securities and debentures of Rs. 4,63,39,569 fall within the purview of the Interest-tax Act. Accordingly, addition on this account for the interest income of Rs. 4,63,39,567 for the asst. yr.

1998-99 is confirmed.

20. The issue involved in this ground is directly covered by our finding recorded while deciding ground No. 1 in Interest-tax Appeal Nos. 38 and 39/Del/2001. In those years, the learned Departmental Representative-CIT took a different view and deleted the addition made by the AO. The decision of learned Departmental Representative-CIT in those appeals for asst. yrs. 1996-97 and 1997-98 has been upheld by us.

Hence, following the said decision of ours, we delete the addition made by the learned CIT(A) by holding that interest earned on debentures and Government securities is not chargeable to interest-tax. In the consequence, this ground is allowed in favour of assessee.

That on the facts and circumstances of the case and in law, the learned CIT(A) XV has erred in holding that : (i) The sum of Rs. 76,46,923 being interest received by the appellant on delayed payments made by customers of lease rentals, hire-purchase instalments etc., is chargeable to interest-tax.

(ii) Interest received by the appellant on overdue instalments arises out of a loan or advance given by the appellant.

22. The very same issue has been dealt by us in assessee's own case for asst. yrs. 1996-97 and 1997-98 rendered in Interest-tax Appeal Nos. 36 and 377 Del/2001 wherein vide our order of even date we have held that the learned CIT(A) was not justified in confirming the order of AO, in charging interest-tax in respect of interest received on delayed payment of lease rent, hire-purchase instalment, etc. The order of the learned CIT(A) is, therefore, set aside and the claim of the assessee is allowed.

23. In the result, all the three appeals preferred by the Revenue are dismissed and the appeal filed by the assessee is allowed.

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