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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Jan-05-2007

Reported in : (2008)110ITD611(Mum.)

Judge : R Yadav, O Narayanan

Appellant : Cfl Securities Ltd.

Respondent : The Dcit (Osd li), Cen. Range - 7

Judgement :

1. The assessee is in appeal before us against the order of Id. CIT(A), Cen. V, Mumbai dated 17/7/2000 passed for assessment year 1996-97. The first grievance of assessee relates to disallowance of Rs. 3,58,963/- out of interest paid to National Stock Exchange by treating the same to be of payment on capital account.

2. The brief facts of the case are that assessee company has filed return of income on 26/11/96 declaring an income of Rs. 1,57,265/-. It is engaged in the business of shares and security broker under National Stock Exchange. On scrutiny of the account it revealed to the A.O that assessee has debited a sum of Rs. 3,79,974/- in the P&L Account as interest paid. Out of this amount a sum of Rs. 3,58,963/- is relating to the interest paid to National Stock Exchange on delayed payment of capital market last installment of Rs. 25.00 lacs. The A.O issued show cause notice to the assessee inviting its explanation as to why this interest should not be disallowed. In response to the query of A.O the assessee

submitted the explanation vide letter dated 20/3/99, which reads as under: During the year, our clients had paid interest of Rs. 3,58,963/- for delayed payment to National Stock Exchange of Rs. 25.00 lacs. Our clients was granted registration on 15/12/1994 and were also allotted registration number INB 230629433 (copy of registration certificate enclosed). On the basis of above registration, we were allowed to act as brokers to New Issue and only actual trading could not be done by our clients. Our clients had acted as brokers to new issue in the month of April 1995 itself. Thus it can be seen that our clients have already commenced business operation from the 1st day of the accounting year. Thus from the above interest paid to NSE is in course of doing business and for the purpose of business of our clients and therefore the same is fully allowable.

Without prejudice to above contention, we have to point out that, our clients had already started business as to act as brokers for sale and purchase of shares and securities. During the last year itself our clients have earned brokerage of Rs. 1.50 lacs. This income has also been assessed under the head of Business Income.

In view of the above interest paid is fully allowable Under Section.

36(i)(iii) of the Income-tax Act, 1961.

The Id. A.O disallowed the interest expenses to the assessee on the ground that assessee paid interest in respect of the initial security deposit without which the assessee could not commence its business, hence it is to be treated as payment on capital account.

4. The Id. counsel for the assessee while impugning the orders of Revenue Authorities below pointed out that assessee got registration with the National Stock Exchange on 15/12/94. It has started its business in the month of April 1995 itself. Though interest is paid on the security deposit for capital market but it was paid after commencement of business and it deserves to be allowed as business expenses. In support of his contention re relied upon the decision of Hon'ble Supreme Court rendered in the case of Veecumsees v. CIT 220 ITR 185 and of Hon'ble Bombay High Court rendered in the case of Calico Dyeing, 34 CTR 265. On the other hand Id. D.R pointed out that interest was not paid for servicing the

loans etc. It is a part of the business instrument. Without making security deposit for capital market assessee could not commence the business. It is a different matter that on certain conditions assessee was allowed to do the business without making full deposit of the capital market. However, such concession granted by the National Stock Exchange is in lieu of interest as a compensation which is to be treated as a part of the security deposit.

5. We have duly considered the rival contentions. Without making the security deposit for capital market assessee could not commence its business. It has made this deposit after certain period with interest.

Thus the interest component relate back to the date when assessee was supposed to make initial deposit with the National Stock Exchange and who authorized the assessee to do the business. We do not find force in the arguments of Id. counsel for the assessee that interest payment was made after commencement of the business and, therefore, it is to be allowed as business expenses. As far as the decision of Hon'ble Supreme Court relied upon by the Id. counsel for the assessee in the case of *Veecumsees*(supra) is concerned, in our opinion assessee cannot draw any benefit from this decision because in that case the assessee ran a jewellery business. It then commenced business also in the exhibition of cinematographic films. In 1961, it obtained loans for building a cinema theatre. The said theatre was built in 1962 and was run by the assessee until July 31, 1965, when it was transferred to another firm.

For the years during which the assessee exhibited films in the said theatre the interest paid on the loans obtained for constructing it were allowed by the Revenue as a deduction under the provisions of Section 36(1)(iii) of the Income-tax Act, that is to say, as being the amount of interest paid in respect of capital borrowed for the purpose of the assessee's business. For the years in question, however, the Income-tax Officer declined that deduction on the ground that the business of exhibition of films in the said theatre was no longer in existence ; therefore, the interest on borrowings attributable to this particular business could not be allowed as a deduction in computing the profits of the other business of the assessee. In appeal, the Appellate Assistant Commissioner allowed the deduction as claimed

by the assessee.

The Income-tax Appellate Tribunal noted the facts aforementioned and found that there was no dispute that for the construction of the said theatre the assessee had made heavy borrowings and the interest on such borrowings had been allowed by the Revenue as a deduction as the assessee was running the said theatre as its own business. The assessee had admittedly paid the interest in question for the years under appeal in respect of the loans which had been obtained for the purpose of investing in the business of exhibition of films. The Appellate Assistant Commissioner had found that it was not disputed that the moneys were borrowed for the purposes of the business of exhibition of films and for the construction of the said theatre, the income from which had been assessed in the earlier years. It was thus clear that at the time when the borrowings were made they were made for business purposes. The Revenue, the Tribunal noted, did not and could not challenge the correctness of this. The Tribunal also found that there was force in the submission on behalf of the assessee that the business carried on by the assessee as a jeweller and in the running of the said theatre, restaurant, etc., were composite. The assessee was carrying on both the businesses in jewellery and in the exhibition of films till July 31, 1965, and that only thereafter was the activity of exhibition of films discontinued. The liability to pay interest had arisen in respect of the business carried on by the assessee till July 31, 1965.

Thus the facts before Hon'ble Supreme Court are quite distinguishable with the facts of the present case. Similarly the assessee cannot draw any benefit from the decision of Hon'ble Bombay High Court rendered in the case of Calico Dyeing & Printing In that case also the assessee is running a concern and it has borrowed capital for purchasing new machinery. But in the present case the interest expenses incurred by the assessee are to be seen on the date when it was supposed to make deposit with the National Stock Exchange because without the deposit it could not commence the business. In view of the above this ground of appeal is rejected.

7. The assessee has claimed short term capital loss of Rs. 36,613/- on the sale of shares of Panchmahal Cement. The Id. A.O doubted the transaction on the ground

that none of the companies involved in the transaction transferred the shares in their name. After considering specific finding of fact recorded by the Id. A.O and confirmed by the Id. CIT(A) we do not find any merit in this ground of appeal because assessee failed to prove the loss in the share transaction Hence this ground of appeal is also rejected.

Order pronounced in the open court on this 4th day of January 2007 at the time of hearing.

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