

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.434 OF 2018
WITH
INCOME TAX APPEAL NO.863 OF 2017

The Principal Commissioner of Income Tax-3 ...Appellant
Versus
Videocon Industries Ltd. & Anr. Respondents

Mr. Suresh Kumar, for Appellant.
Mr. Bryan Pillai, i/b. Shardul Amarchand Mangaldas & Co, for
Resolution Professional.

CORAM: K. R. SHRIRAM &
 DR.NEELA GOKHALE, JJ.
DATED: 14th February 2024

PC:-

INCOME TAX APPEAL NO.863 OF 2017

1. Mr. Pillai states the Court may hear the appeal for admission and if the Court is inclined to admit the appeal, in that case, the Respondent being in Corporate Insolvency Resolution Process (“CIRP”), the Court should stay the proceedings. Mr. Pillai states the moratorium under Section 14 of the Insolvency and Bankruptcy Code (“IBC”) is still in force. Mr. Suresh Kumar was also agreeable.

2. The following two substantial questions of law are proposed. In our view, both the questions are inter-connected.

“6.1 *Whether on the facts and in the circumstances of the case and in law, the Hon’ble ITAT was justified in upholding the decision of the Ld. CIT(A) in deleting the disallowance of*

Rs.12,87,36,636/- out of the interest expenses claimed u/s 36(1)(iii) of the Income Tax Act, 1961, without appreciating the fact that the interest bearing funds were given to subsidiary company as interest free deposits in guise of share application money ?

6.2 Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in upholding the decision of the Ld. CIT(A) in deleting the disallowance of Rs.1,25,00,000/- being upfront fees paid to Central Bank of India without appreciating the fact the fees were paid to obtain the loan not for its own business but was given to subsidiary company without any consideration ?

3. Assessee was engaged in the business of manufacture and trading of consumer electronics and home appliances, investments in shares and securities and properties, etc. Assessee filed on 30th September 2008 its return of income for Assessment Year (“AY”) 2008-09 declaring total income at Rs.622,26,94,667/-. An assessment was completed under Section 143(3) of the Income Tax Act, 1961 (“**the Act**”) and an order dated 31st March 2011 came to be passed determining the income of assessee at Rs.647,55,09,642/-. Subsequently, by an order under Section 154 of the Act, the income of assessee was revised at Rs.588,02,16,620/-.

4. Subsequently, the assessment was reopened under Section 147 of the Act and a notice under Section 148 of the Act came to be issued. The reason to believe included three items namely, (a) disallowance of transport expenses Rs.46,028/-,(b) disallowance of interest under Section 36(1)(iii) of Rs.12,87,36,636/- and (c) disallowance of upfront fee of Rs.1,25,00,000/-. Reassessment order dated 27th February 2013 came to be passed determining the income

of Rs.602,14,99,280/- in view of the three disallowances mentioned above. Aggrieved by this order, assessee preferred an appeal before the Commissioner of Income Tax (Appeals) [**CIT(A)**]. By an order dated 26th April 2013, the CIT(A) partly allowed the appeal. The CIT(A) deleted the disallowance of interest under Section 36(1)(iii) of the Act amounting to Rs.12,87,36,636/- and the upfront fee of Rs.1,25,00,000/-. Aggrieved by this order, Revenue preferred the appeal before the Income Tax Appellate Tribunal (“**ITAT**”). The ITAT dismissed the appeal by the impugned order pronounced on 31st May 2016 and it is this order which is challenged before us in this appeal.

5. It is the case of Revenue that interest bearing funds were given by assessee to its subsidiary as interest free deposits in the guise of share application money. Therefore, interest paid to Central Bank of India (“**CBI**”) which had advanced term loan of Rs.500 Crores, to the extent of Rs.12,87,36,636/- has to be disallowed. Revenue also submitted that since the upfront fees paid to CBI was for taking this term loan, which was given to its subsidiary as interest free deposit in the guise of share application money and not for assessess’s own business, the upfront fee also should be disallowed. It is the case of Revenue that the interest bearing funds were diverted for non-business purposes. Assessee’s case was the amount of loan taken from CBI was advanced to the subsidiary for acquiring further share capital in its subsidiary, which was in telecom business and since the

valuation thereof was very high, assessee for commercial expediency advanced interest free deposit to the subsidiary. Assessee also submitted that investment in shares, securities was one of the activities of assessee and, therefore, no disallowance of interest ought to have been made. Assessee also relied on the judgments of the Apex Court in (a) *S.A. Builders*¹ to submit that such expenditure is allowable on grounds of commercial expediency; and (b) in *CIT v. Srishti Securities (P) Ltd*² to submit that if funds were borrowed by an investment company for making investment in shares for the purpose of acquiring controlling interest, interest on such borrowed funds would be deductible. Assessee also relied on *Reliance Communications Infrastructure Ltd*³.

6. The CIT (A) and the ITAT after considering the material on record and relying on the ratio of the three judgments relied upon by assessee came to a factual finding that amount of Rs.500 Crores advanced as share application money by assessee to Videocon Telecommunications Ltd (“VTL”) was for the purpose of assessee’s business and in view thereof (a) disallowance of Rs.12,87,36,636/- out of interest expenditure claimed by assessee under Section 36(1) (iii) of the Act was unwarranted and consequently, upfront fee of Rs. 1,25,00,000/- paid to the CBI in respect of the loan of Rs.500 Crores was also to be allowed as deduction. The CIT(A) and the ITAT arrived

1 (288 ITR 1) (SC)
2 (2010) 321 ITR 498 (Bom)
3 (2012) 207 Taxman 219
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at finding of fact that the amount advanced to subsidiaries was for the business purposes as the same are linked with the business of the subsidiary in which assessee had deep interest. Moreover, the valuation of Telecom business at the relevant time was very high and hence, it was a commercially expedient decision to invest in that business. Both the CIT(A) and the ITAT accepted assessee's view point that if the subsidiary company expands and progresses, assessee will be benefited by the same as the valuation and networth of assessee will also increase. Moreover, the transaction was approved and authorised by the Board of Directors in the normal course of business activities and hence, any interest paid on funds utilized for the purpose of such business activity is allowable expenditure under Section 36(1)(iii) of the Act. On facts also, it was concluded that assessee had an aggregate share holding of 64% in the subsidiary and, therefore, it cannot be contended that share application money made is not for business purpose.

7. Since both the CIT(A) as well as the ITAT had come to a factual finding and the law is also clear that if an assessee for commercial expediency and in the normal course of its business activities takes loan to invest in shares of its subsidiary, the interest paid on these advances utilized is allowable expenditure under Section 36(1)(iii) of the Act.

8. In the factual and legal matrix of the case, we donot see any
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reason to interfere in the impugned order. In our view, no substantial question of law arises. Appeal dismissed.

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1 Mr. Pillai states he does not even have a copy of the Appeal. Mr. Suresh Kumar states he will forward a copy of the Appeal during the course of the day.

2. Stand over to 16th February 2024.

(DR.NEELA GOKHALE, J.)

(K. R. SHRIRAM, J.)