IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.08.2024

PRONOUNCED ON : 28.10.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

T.C.A.No.1249 of 2010

M/s. EIH Associated Hotels Limited,
No.24, G.S.T. Road, Meenambakkam,
Chennai – 600 027. .. Appellant

vs

Commissioner of Income Tax – I,
121, Mahatma Gandhi Road,
Chennai – 600 034. .. Respondent

Prayer : Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of Income-Tax Appellate Tribunal 'A' Bench, Chennai dated 06.08.2010 passed in I.T.A.No.654/Mds/2010.

For Appellant : Mr.T.Vasudevan

For Respondent : Mr.Avinash Krishnan Ravi
Junior Standing Counsel

JUDGMENT

(Per :- Dr. ANITA SUMANTH.,J)

The substantial questions of law admitted in this appeal are as follows:-

> *"A. Whether in view of the fact that when two views are possible and the view of the Assessing Officer in allowing the expenditure is supported by the decision of the jurisdictional Tribunal in Overseas Sanmar Financial Limited – vs – JCIT (2003) 86 ITD*

602 (Chennai), decision of the High Court in CIT – vs- Gujarat Guardian Ltd. [2009] 177 Taxman 434 (Del), decision of Supreme Court in CIT v Madras Auto Service (P) Limited (1998) 233 ITR 468 (SC), the Commissioner of Income Tax can exercise the power of revising the assessment order on the ground that he takes a different view and particularly when two views are possible whether the order can be said to be erroneous in so far as it is prejudicial to the interest of revenue and therefore is liable to be quashed and / or set aside?

B. Whether in the facts and circumstances of the case the expenditure incurred for payment of foreclosure premium for restructuring loan and obtaining fresh loan at a lower rate of interest is allowable as business expenditure under Section 37(1) of the Income Tax Act in view of the judgment of the Jurisdictional Tribunal in the case of Overseas Sanmar (86 ITD 602) and the judgment of the Delhi High Court in the case of Gujarat Guardian (177 Taxman 434) or should such expenditure be treated as capital expenditure in view of the judgment in the case of Aztec Software & Technology Services (107 ITD 441)?

C. Whether in the facts and circumstances of the case the provision for bad and doubtful debts is required to be added back in view of the law laid by the Supreme Court in the case of Vijaya Bank (323 ITR 166)?"

2. The appellant challenges an order of the Income Tax Appellate Tribunal (ITAT/Tribunal) confirming an order passed by the Commissioner of Income-Tax under Section 263 of the Income-Tax Act, 1961 (Act) for Assessment Year (AY) 05 – 06.

3. An order of assessment was passed on 30.11.2007 in respect of AY 05 – 06. The assessing authority notes in the scrutiny order that notices under Section 143(2), including on 09.10.2006, had been issued. The appellant had been represented at the time of assessment and all

particulars as sought for had been submitted. The assessment had been completed on 30.11.2007 making certain adjustments to the claim of depreciation and a disallowance under Section 43B of the Act. As a consequence, the loss returned had been reduced.

4. While so, notice u/s 263 dated 25.02.2010 had come to be issued, proposing revision of the assessment. The notice proceeded on the basis that the assessment was erroneous and prejudicial to the interests of the Revenue for the following reasons:-

> *"1) Perusal of the records shows that the assessee borrowed loan from HSBC Bank to the tune of Rs.40 crores at higher interest rate (around 13%). However, during the relevant year, the said loan was repaid by taking a new loan of Rs.40 Crores from UTI Bank which carries lower interest of 8% per annum. In the P&L Account, the assessee company debited Rs.3,41,00,000/- under head 'Premium on Term Loan', and it was explained by the assessee that it was wrongly classified as repayment of premium but it actually represents additional interest charged by HSBC for pre-closure of loan.*
> *Interest, however is to be paid to the bank, only if any amount is due to the bank alone. Whereas in your case, the loan was squared up. Therefore, the payment of interest does not exist. Further, if at all any interest is to be paid, it has to be paid to the Bank of UTI only. Besides, the charges for pre-closure would be on the basis of percentage of loan sanctioned earlier by HSBC and not additional interest as stated by you. Therefore, the expenditure claimed by you of Rs.3.41 crores is not allowable u/s 37 of the Income Tax Act.*
> *2) Further, the provision for doubtful debts and allowances of Rs.4,24,950 was omitted to be added back to the Total income."*

5. The appellant responded on 09.03.2010 justifying the acceptance of its claim of pre-closure premium as expenditure under

Section 37 of the Act. As regards the omission to add back, the provisions for doubtful debts and advances, the appellant merely states that the issue had been examined while framing assessment orders. No further justification is offered. The detailed explanation set out in regard to the claim to pre-closure premium is as follows:-

> *"As regards your first contention we would like to point out that in the Profit & Loss Account for the year ended 31.3.2005 a sum of Rs.34,100,000/- was debited as premium on prepayment of term loan, which is classified as extraordinary item. At the time of hearing the Assessing Officer sought justification for claiming the prepayment premium as allowable business expenditure. Vide letter dated 3.10.2007 it was clarified that the Company had borrowed from The Hongkong & Shanghai Banking Corporation Limited, 31 BBD Bag, Kolkata – 700001 a sum of Rs.40 crores out of which Rs.21.2 crores carried interest rate of 13.10% p.a. and the balance amount of Rs.18.8 Crores carried interest rate of 12.75%. Since the rate of interest charged by HSBC was too high and loan was available in the market at that time at a substantially lower rate from other banks so it was decided to foreclose the term loan of HSBC by taking fresh loan of Rs.40 Crores from UTI Bank Limited at the rate of 8%. As per terms of the loan agreement with HSBC a prepayment premium of Rs.3.41 Crores was required to be paid as the loan was paid before due date. Evidently, the payment was made on the grounds of commercial expediency for the ultimate benefit of the business as the loan restructuring would result in saving of interest of around 5% p.a. In terms of section 36(1)(iii) read with section 2(28A) prepayment charges, being interest paid on moneys AO was satisfied with our explanation and allowed the claim in assessment.*
>
> *You have raised the issue that as the loan from HSBC was squared up during the relevant assessment year the question of "payment of interest does not exist". The loan was repaid on 11.6.2004 as would be evident from our letter of even date to HSBC. So the Company had to pay*

interest on the outstanding loan amount till the date of repayment. Again the charge for foreclosure of loan is very much in the nature of interest with HSBC would have been entitled to if no repayment was made. We would refer to the decision of the Hon'ble Delhi High Court in the case of CIT vs Gujarat Guardian Ltd reported in [2009] 77 Taxman 434(Delhi) wherein it was held that prepayment premium was nothing but present value of differential rate of interest that would have been due if no restructuring of loan had taken place and hence an allowable business expenditure."

6. Overriding the objections, the Commissioner of Income-Tax passed order on 09.03.2010 confirming the proposals for revision. He set aside the assessment order made initially and directed the assessing authority to pass a fresh order in line with the proposals in the notice/order under Section 263. The appellant filed an appeal before the ITAT challenging both the assumption of jurisdiction under Section 263 as well as the order on merits. The appeal has been rejected by way of the impugned order.

7. The conclusion of the Tribunal is based substantially on the judgment of the Supreme Court in the case of *Southern technologies Ltd vs Joint Commissioner of Income Tax* [320 ITR 577] and the decision of the Special Bench of the Income Tax Appellate Tribunal in the case of *Aztec Software & Technology Services Limited v ACIT* [107 ITD 141].

8. The Tribunal expresses the view that both the issues identified for revision have been decided adverse to the assessee, one by the Supreme Court being the issue of provision of bad and doubtful debts, and the other by the Special Bench of the Income Tax Appellate Tribunal

being the issue of pre-closure premium. Hence, the conclusion is that the order passed under Section 263 was correct, both on the aspect of assumption of jurisdiction and on the merits, and the view arrived at by the assessing officer at the original instance was concurrently erroneous and prejudicial.

9. Mr.Vasudevan, appearing for appellant at the outset contests the assumption of jurisdiction by the Commissioner. Reliance is placed on the case law in *(i) Malabar Industrial Co., Ltd v Commissioner of Income Tax* 159 CTR (SC) 1, (ii) *Commissioner of Income Tax- Gujarat II v Kwality Steel Suppliers Complex*, AIR 2017 SC 2949, (iii) *Commissioner of Income Tax v South India Shipping Corporation Ltd* 147 CTR (Mad) 433, (iv) *The Commissioner of Income Tax (Central II) v Goetze (India) Limited* [2014 II AD Delhi 81] and (v) *Commissioner of Income Tax, Central –I v Maithan International* [(2015) 277 CTR (Cal) 65].

10. On merits, the appellant would reiterate the submissions advanced in the earlier round, drawing attention to the fact that the transaction of pre-closure premium was on the basis of commercial and business expediency. Reliance is placed on the decision of the Delhi High Court in the case of *CIT v Gujarat Guardian* [177 Taxman 434] where the ratio of the judgment of the Supreme Court in the case of *Madras Industrial Investment Corporation Limited vs CIT* [225 ITR 802] is applied.

11. The decision of the Madras Bench of the ITAT in the case of *Overseas Sanmar Financial Limited vs Joint Commissioner of Income Tax [2001 (2) TMI 303]* is also relied upon by the appellant as a direct

authority on the proposition in question.

12. Reference is also made to the judgments of the Supreme Court in *Sassoon J.David and Co. Pvt Limited v Commissioner of Income-Tax, Bombay* [118 ITR 261], which reiterate the settled position that expending of money for commercial expediency and to facilitate carrying on business would be nothing but revenue expenditure.

13. Mr.Avinash Krishnan Ravi, learned Standing Counsel appearing for the Revenue, would distinguish the decisions cited, pointing out that neither the Supreme Court nor the Delhi High Court had dealt with pre-closure premium. Revenue for its part, relies on the decision of the Delhi High Court in *Zaheer Mauritius v Director of Income-Tax [270 CTR Del 244]*, particularly paragraph 13 thereof.

14. Heard learned Counsel. The facts of the matter are admitted and have been set out in detail in the response of the assessee dated 09.03.2010, extracted above. We hence do not repeat the same yet again but would only draw attention to paragraph 10 above that may be referred to for the admitted facts.

15. Since the order of assessment was silent in regard to the issues that arose from the return of income filed by the assessee, we called for the records to verify whether the issues had been identified by the assessing officer in the original round of assessment and whether response had been sought from the assessee.

16. The order of assessment is dated 30.11.2007 and prior to passing of the assessment order there were several hearings. Though no

written query appears to have had been raised with regard to allowability of the pre-closure premium, the records reveal, in specific, a copy of Annexure V, being the *'Schedule of interest and finance charges on fixed loans'* disclosing the loans taken and the interest and finance charges thereupon. The aforesaid details have thus been sought for by the assessing officer.

17. As regard the issue of provision for doubtful debts and advances, too, there is no query on record. We note incidentally that even in the grounds of appeal filed by the appellant before the Income-Tax Appellate Tribunal while presumption of jurisdiction under Section 263 and the allowability of claim of pre-closure premium have been specifically raised, there is no ground pertaining to the provision for doubtful debts and advances.

18. The records reveal an interesting turn of events. There is an audit note on file, which reads as follows:-

> *Name of A. EIH Associated Hotels Ltd Pan No: AAACE2125M*
> *Status – Co*
> *Ay. Process AO.D – T-.Income C/A/Sec*
> *OF06 143/3 30/11/07 – 5,82,86,789 not seen*
> *The 'is' is doing the business of running hotels, for AY 05-06 on 28.10.05 admitting a loan of Rs.5,85,56,523. It is seen from the P & L Q/C the ís' had debited a sum of Rs.3.41 crores as premium paid on preclosure on prepayment of loan. Any espouse related connect with raining and loan or any interest payment inallowed.. Premium paid on preclosure of loan cannot be allowed or revenue expenditure in 37 of the IT act.*
> *DC may kindly consider this observation.*
>
> *Sd/-*
> *Audit officer*

19. The assessing authority has called for a specific reply to the audit objection and the appellant has supplied a detailed explanation on

03.10.2007, in the following terms:-

"5. Prepayment of Term Loan of HSBC

The Company had borrowed from The Honkong & Shanghai Banking Corporation Limited, 31, B.B.D. Bag, Kolkata – 700001 (HSBC) a sum of Rs.40 crores of which 21.2 crores (First Instalment) carried attracted interest rate of 13.10% p.a whereas the second instalment of Rs.18.8 crores attracted interest rate of 12.75% p.a. The said loan was prepaid during the assessment year under review by taking a new loan of Rs.40 crores from UTI Bank Limited, 7, Shakespeare Sarani, Kolkata – 700071 at a lower rate of interest of 8% p.a. approximately. This fact can be verified from Annexure – X of Tax Audit Report. Basically, prepayment premium represented additional interest charged by HSBC for repayment of outstanding term loan before due date. Thus the payment of premium of Rs.3.41 crores was made on the grounds of commercial expediency for the ultimate benefit of the business, as it would result in saving of interest to the tune of almost 5% p.a. in the subsequent assessment years due to reduction in rate of interest. The expenditure on account of debt refinancing, being laid out wholly and exclusively for the purpose of business, is allowable U/s.37(1) of the Act. A copy each of the bank's letter dated 9.6.2004 and our letter dated 11.6.2004 to HSBC in connection with the prepayment of loan is enclosed for your ready reference. We also enclose a copy each of the sanction letters of HSBC and UTI Bank LTd.

Regarding your query as to why the premium of Rs.3.41 crores paid on prepayment of term loan was not disclosed in Tax Audit Report, our submission is that there is no provision for furnishing such information in the clauses prescribed in Form 3CD U/s.44AB."

20. The reply has been duly considered by the officer who then responds to the audit slip in the following terms:

Reply to Audit Slip No.13
Name of the assessee M/s. EIH Associated Hotels Ltd

Status	*Company*
PAN	*AAACE2125M*
Nature of business	*Hotel Industry*
Asst Year	*2005-06*

The assessee company had borrowed loan from HSBC bank to the tune of Rs.40 crores of which 21.2 crores was received as first installment with interest rate of 13.10% per annum whereas the second installment of Rs.18.8 crores attracted interest rate of 12.75% per annum. The said loan was repaid during the assessment year 2005-06 by taking a new loan of Rs.40 crores from UTI Bank at a lower rate of interest of 8% per annum approximately. This fact was disclosed in the Annexure X of the Tax Audit Report. The asssessee explains that this was wrongly mentioned as repayment of premium. Actually, it represents additional interest charged by HSBC for repayment of outstanding term loan before due date. Since this is an additional interest, the assessee claimed it as revenue expenditure, I am enclosing herewith the letter from the assessee dated 03.10.2007.

In view of the above, audit objection may kindly be dropped

Sd/-
[M.RAJAN]
Deputy Commissioner of Income Tax
Company Circle II[1], Chennai -34"

21. The issuance of the audit note, the application of mind of the officer to the objection raised, the call for response from the assessee and rebuttal of the objection raised, are prior to passing of the order of assessment on 30.11.2007. The settled position in regard to assumption of jurisdiction under Section 263 is that the Commissioner of Income Tax would be vested with the proper authority to revise an assessment only in matters where an issue has been decided erroneously and in a manner prejudicial to the revenue. The twin conditions would have to be satisfied concurrently.

22. Thus, we find the reliance placed on the judgement in *Malabar Industrial Co., Ltd* (supra) to be well conceived as in the present case the issue relating to pre-closure premium has not slipped the

attention of the officer. The response to the audit objection reveals that the officer has applied his mind to the legal issue that arises, has considered the stand of the assessee and thereafter come to the conclusion that the claim of the appellant is correct and liable to be allowed.

23. Though courts have held that mere disagreement with the view taken by the assessing authority would not be a sufficient ground for invoking power under Section 263, it is quite another matter if the conclusion of the authority is palpably erroneous or contrary to settled law or judgment of the superior Courts. However, in the present case, the conclusion of the assessing authority in his reply to the audit objection is tenable even on merits.

24. The issue in question relates to whether pre-closure premium can be claimed as revenue expenditure under Section 37. The appellant has relied upon the decision of the Delhi High Court in Gujarat Guardian and learned Junior Standing Counsel, for the Revenue would distinguish that decision pointing out that neither the Supreme Court in the case of *Madras Industrial Investment Corporation Limited* nor the Delhi High Court in the case of *Gujarat Guardian* had dealt with pre-closure premium.

25. The facts in those two cases are distinguishable, and relate to whether pre-payment premium should be allowed as deduction in the year of payment or should be amortized over the tenure of the loan / financial arrangement. In *Madras Industrial Investment Corporation Limited*, the Supreme Court had held that the pre-payment premium must be

amortized over the tenure of the loan and so too in the case of *Gujarat Guardian*, the Tribunal and the Delhi High Court accepted the assessee's contention that the entirety of the pre-payment premium must be allowed as a deduction in the previous year relevant to the assessment year in question.

26. The Delhi High Court returned a categoric finding that the authorities had not disputed that the pre-payment premium assumed the characteristic of 'interest' payable to a public financial institution. Hence, the nature of the payment was not in dispute.

27. Though the aforesaid decisions are on the point of amortization or otherwise, the transaction in the case of *Gujarat Guardian* and in the present case are similar. The Court has held that the prepayment premium of Rs.8 crores represents present value of the differential rate of interest that would be payable by the assessee if the loan had not been restructured. Hence, applying Section 36 (1)(ii) read with Section 2(28A) of the Act, the claim for deduction was allowed as revenue expenditure. Thus, the distinction that is sought to be made by the Revenue would not, in our view, come to its aid.

28. Revenue has relied upon the decision of the Delhi High Court in *Zaheer Mauritius*. In that matter, the challenge was to a ruling of the Authority for Advance Ruling (AAR) holding that the gains on the sale of equity shares and Compulsorily Convertible Debentures (CCDs) held by that petitioner were not exempt from income-tax and were to be characterised as 'interest' within the meaning of Section 2(28A) of the Act

and Article 11 of the applicable Double Taxable Avoidance Convention and would be taxable under both domestic and international law.

29. According to the Revenue, the expression 'interest' as used in that matter would be apposite to 'interest', which is the subject-matter of the present case as well and the observations of the Delhi High Court at paragraph 13 are pressed into service. However, we do not believe that this decision advances the case of the Revenue. The observations in paragraph 13 extracted below are unique to the case of CCDs which was the subject-matter of that writ petition.

> *"There is no dispute as to the nature of Compulsorily Convertible Debentures. A debenture indisputably creates and recognizes the existence of a debt and till it is discharged, either by payment or by conversion, the debenture would essentially represent a debt. A Compulsorily Convertible Debenture is a debt which is compulsorily liable to be discharged by conversion into equity. Any amount payable by the issuer of debentures to its holder would usually be interest in the hands of the holder. Black's Law Dictionary (7th Edition) defines 'interest' inter alia as compensation fixed by agreement or allowed by law for use or detention of money, or for loss of money by one who is entitled to its use; especially, the amount owed to a lender in return for the use of borrowed money. According to Stroud's Judicial Dictionary of Words and Phrases (5th Edition), interest means, inter alia, compensation paid by the borrower to the lender for deprivation of the use of his money. Concededly, gains arising from sale of capital assets would not be in the nature of interest. The expression 'interest' as defined under Section 2(28A) of the Act cannot apply to all gains that are received by a debenture holder (lender) irrespective of the transaction resulting in such gains. As an illustration, a lender may assign its debt to a third party and if such debt is held as a capital asset, the gain or loss arising from the transaction would be a*

capital gain/loss in the hands of a lender and would not be construed as interest. Similarly, any loss suffered by the lender in such transaction i.e. where a debt is assigned for a consideration less than the amount lent, would be a capital loss. Whether a Compulsorily Convertible Debenture is a loan simplicitor or whether it is in the nature of equity, is not material in determining whether the gain on the sale of the debentures by its holder is a capital gain or not. This depends entirely on whether the debentures are capital assets in the hands of its holder."

30. The above observations would have no bearing to the present case which concerns interest payable on a financial arrangement entered into with the bank. That apart, even the High Court in conclusion, states that the taxability of the gains from CCDs would depend on whether the debenture was a capital asset in the hands of its holder or otherwise. Hence, the decision in *Zaheer Mauritius* has to be read and understood in the context of those facts alone and would have no bearing in the present case.

31. Revenue also relies on decisions of this Court in *Ashok Leyland Finance Limited v The Deputy Commissioner of Income Tax, Company Circle 1(1)* in TC(A) No.94 of 2009 dated 29.12.2022 and *Chennai Petroleum Corporation Limited v Assistant Commissioner of Income-Tax, Company Circle I(3)* in TCA 521 of 2018 dated 13.10.2020. According to the revenue, the very question that arises in the present case has been decided adverse to the assessee in the latter appeal.

32. The substantial questions of law answered in the case of *Chennai Petroleum Corporation Limited* were the following:-

"(i) Whether the Tribunal was right in law in

holding that the expenditure incurred during the year towards prepayment charges for substituting high cost debt for low cost debt is in the nature of interest as defined under Section 2 (28A) of the Act and hence not allowable as deduction under Section 37 of the Act? And

(ii) Whether the Tribunal was right in law in holding that the prepayment charges is in the nature of interest incurred during the construction period would form part of the capital asset to be capitalised as per proviso to Section 36(1)(ii) of the Act, without appreciating that the expenditure in question was not incurred in raising a debt but incurred for extinguishment/liquidation of borrowings?"

33. Referring to the decision of the Supreme Court in the case of *Deputy Commissioner of Income-Tax v Core Health Care Limited* [298 ITR 194], the Tribunal in that case had taken note of the provisions of Section 36(1)(iii) of the Act holding that the reset fee would stand to be a part of the core cost of capital asset towards acquiring which the borrowing was applied. Hence the interest which was incurred during the construction of that asset was also held to be capital in nature. These reasons found favour with the Division Bench of this Court, which ultimately answered the issue in favour of the Revenue.

34. In the present case, it has never been the case of the Revenue that the borrowing was deployed towards purchase of capital asset or purchase / acquisition of a capital asset on that the transaction itself should be viewed as being capital in nature. Such an angle does not find place in either the show-cause notice, order under Section 263 or order of the ITAT. Hence, we would prefer to answer the substantial questions of law based on the factual matrix of the transaction as

emanating from the records.

35. Simply put, the Commissioner of Income-Tax expressess in the order under Section 263, the view that *'the question of payment of interest will arise only when any amount is due to the bank. Here, when the loan has been squared up the question of payment of interest does not arise at all. Further the pre-closure charges would a percentage on loan amount sanctioned earlier by HSBC and not additional interest'.* According to him, the question of payment of interest would not arise in a case where the loan has been pre-closed. There is no other reason on the basis of which he felt compelled to reverse the grant of claim under Section 37. These decisions are thus of no avail to the revenue.

36. The Income-Tax Appellate Tribunal in the case of *Overseas Sanmar Financial Limited (supra)*, has dealt with the identical issue on similar facts. In that case as well, the issue that arose was allowability of foreclosure premium on loans. That assesse had taken certain fixed term loans at high rates of interest. During the tenure of those loans, since fresh loans had been advertised by financial institutions with lower rate of loans it negotiated the closure of the earlier loans on charge. That charge was claimed as business expenditure on account of the restructuring exercise. The assessing authority was of the view that the claim should be rejected as there was an enduring benefit to the assesse.

37. In appeal, it was argued that the amount may be treated as processing charges for the new loan and was accepted by the

Commissioner of Income-Tax (appeal) relying on the judgment of the Supreme Court in *Madras Industrial Corporation Limited* (supra). However, he took an adverse view with regard to the argument of allowability of the loan, confirming the view of the assessing authority that the pre-closure premium had an enduring benefit. The Tribunal, however, accepted the contention of the assessee in second appeal as follows:

> *"The rival contentions on this issue together with the case laws as referred to have been given our very careful consideration. The fact as is evident from the record is that the loan that was taken in earlier years was repaid in full in the previous year relevant to the assessment year and this resulted in the payment of charges levied by the financial institutions to the tune of Rs.56,15,126. It is also evident from the record that the reduction in the rate of interest for fresh loans to be advanced by the financial institutions led the assessee company to pay off the entire loan that carried the burden of higher rate of interest. The assessee apparently calculated the amount of interest that it would be, paying over the years at the agreed rate of interest and compared it with the foreclosure premium together with the interest that it would pay on the revised rate basis and found it to be advantageous to the company by paying the foreclosure premium. This advantage that the company wanted to benefit from is clearly a well judged business decision and therefore, it is laid out wholly for the purposes of its business. This itself is sufficient for allowing the claim in full in the year in which it was incurred."*

The view of the Tribunal appeals to us.

38. The foreclosure of the loan to contain the exorbitant charges to be paid, stem from a business decision of the assessee and the commercial expediency that governs its business dealings. In *Sassoon J. David and Co.Pvt Limited* (supra), the Supreme Court states succinctly

that *'ordinarily it is for the assessing authority to decide whether any expenditure should be incurred in the course of his or its business. Such an expenditure may be incurred voluntarily and without any interest and if it is incurred for promoting the business and to earn profits, the assesse can claim deduction under Section 10(2) (xv) of the Act even though there was no compelling necessity income such expenditure.'*

39. Hence it is for an assessee to decide what would be the best way of going about its business and maximising its profit subject to such acts being within the four corners of the law. Incidentally, the decision of the Tribunal in *Overseas Sanmar Financial Limited (supra)* has not been challenged by the Income-Tax Department and has attained finality.

40. One last point, the Commissioner of Income-Tax has distinguished the decision in the case of *Gujarat Guardian* by stating that the original loan as well as restructured loan had been availed by the assesse from UTI only whereas in the present case, the original loan had been taken from HSBC and restructured with UTI Bank with lower rates. We find this distinction irrelevant.

41. The judgment of the Supreme Court in *Southern Technologies* (supra) and the decision of the Income-Tax Appellate Tribunal Special Bench in the case of *Aztec Software & Technology Services Limited* (supra) turn on entirely different issues, wholly unconnected to the present issue. We thus find no application of those cases to present issue and reference to those decisions by the Tribunal is misplaced.

42. For the aforesaid reasons, substantial questions of law (1) and (2) are answered in favour of the appellant and against the Revenue. No submissions have been advanced in regard to question (3) and the same is hence returned unanswered. This Tax Case Appeal is allowed. No costs.

[A.S.M., J] [G.A.M., J]
28.10.2024

Index: Yes
Neutral Citation: Yes
ssm

To

The Commissioner of Income Tax – I,
121, Mahatma Gandhi Road,
Chennai – 600 034.

DR. ANITA SUMANTH.,J.
and
G. ARUL MURUGAN.,J.

ssm

T.C.A.No.1249 of 2010

28.10.2024