SUPREME COURT OF INDIA

The Commissioner of Income Tax-IV

Vs.

Vs.

Shree Rama Multi Tech Ltd

C.A.No.6391 of 2013

(R.K.Agrawal and Abhay Manohar Sapre,JJ.,)

24.04.2018

JUDGMENT

R.K.Agrawal,J.,

1. The present appeal has been preferred against the impugned final judgment and order dated 18.12.2012 passed by the High Court of Gujarat in Tax Appeal No. 235 of 2012 whereby the Division Bench of the High Court dismissed the appeal filed by the Revenue-the appellant herein against the judgment and order dated 21.10.2011 passed by the Income Tax Appellate Tribunal (in short 'The Tribunal") in ITA No.1039/Ahd./2007 and

2. Brief facts:-

> "a) The Respondent - M/s. Shree Rama Multi Tech Ltd. is engaged in the manufacture of multi-layer tubes and other specialty packaging and plastic products. The dispute in the present case relates to Assessment Years 1999-2000, 2000-2001 and 2001-2002. The Respondent filed its return of income for the Assessment Year 2000-2001 declaring a total income of Rs 20,00,59,650/-. However, the Assessing Officer, vide order dated 31.03.2003, passed an order of assessment assessing the taxable income at Rs 27,61,14,254/-. But the same came to be modified in light of the decision given by the Tribunal dated 16.12.2004 in ITA No. 1481/Ahd./2004 and ITA No. 1685/Ahd./2004 wherein the Tribunal has directed for re-adjudication on certain matters including that of set-off as claimed under the head of interest on share application money. In pursuance of the Order passed by the Tribunal dated 16.12.2004, the total income was re¬determined at Rs. 17,30,88,691/- by the Assessing Officer vide order dated 29.12.2004 but was restricted to 20,00,59,650/- in view of proviso to Section 240(b) of Income Tax Act, 1961 (in short 'the IT Act').

(b) Aggrieved by the aforesaid order, the Respondent went in appeal before learned Commissioner of Income Tax (Appeals). Learned CIT (Appeals), vide order dated 09.01.2006, allowed the appeal filed by the Respondent while directing the Assessing Officer to grant relief by re-computing the income and modifying the tax calculation without applying the proviso to Section 240 of the IT Act. In the meanwhile, re-assessment proceedings were initiated in accordance with Section 147 of the IT Act on the ground that the Assessing Officer has reason to believe that income for the said Assessment Year has escaped assessment. Finally, on 21.03.2006, the Assessing Officer determined the total income at Rs 20,66,29,165/-.

(c) Being aggrieved by the order dated 21.03.2006 in not allowing set off of the interest income against the public issue expenses in accordance with the directions of the Tribunal while rejecting the claim for the deduction of interest income of Rs. 1,71,30,212/- from public issue expenses, the Respondent went in appeal before the CIT (Appeals) by filing CIT (A) ACITC 8/74/2006-2007. Learned CIT (Appeals), vide order dated 05.01.2007, partly allowed the appeal filed by the Respondent while affirming the findings of the Assessing Officer in not allowing set off of interest income from share application money.

(d) Being aggrieved by the order passed by learned CIT (Appeals), both the parties filed cross-appeals before the Tribunal. The Tribunal, by a common judgment dated 21.10.2011, allowed the claim of the Respondent with respect to the deduction on account of interest income of Rs 1,71,30,212 and remanded the matter back to the Assessing Officer on other issues.

(e) Being aggrieved, the Revenue filed an appeal before the High Court being ITA No. 235 of 2012. A Division Bench of the High Court, vide order dated 18.12.2012, dismissed the appeal on the point of taxability of the interest income.

(f) Aggrieved by the order dated 18.12.2012, the appellant has filed this appeal before this Court.

3. Heard learned counsel for the parties and perused the factual matrix of the case.
Point(s) for consideration: -

4. Whether in the facts and circumstances of the present case, interest accrued on account of deposit of share application money is taxable income at the hands of the Respondent?
Rival contentions:-

5. Learned counsel appearing on behalf of the Appellant contended that the impugned final order passed by the High Court is against law and facts of the present case. He further contended that the High Court grossly erred in relying on its earlier order dated 26.07.2011 passed in Tax Appeal No. 315 of 2010 titled Assistant Commissioner of Income Tax vs. Panama Petrochem Ltd. and not appreciating the fact that the Department could not file a petition for special leave before this Court due to low tax effect being Rs. 9,81,541/- wherein

it was held that the interest income occurred by keeping the amount of share application money in a bank account is liable to be set-off against the public issue expenses.

6. Learned counsel for the appellant finally contended that the law is well settled that the interest income is always regarded as of revenue nature unless it is received by way of damages or compensation. The present case is not related either to damages or compensation and the High Court erred in arriving on such a conclusion which is not in accordance with law and is liable to be aside.

7. Per contra, learned counsel appearing on behalf of the Respondent submitted that the case is squarely covered under the *Commissioner of Income Tax vs. Bokaro Steel Ltd. reported in*[1] Learned counsel finally submitted that the judgment of the High Court was well within the parameters of law and requires no interference.

Discussion:-

8. The Respondent company had come out with initial public issue during the year under consideration and the amount of share application money received was deposited with the banks on which interest of Rs. 1,71,30,202/- was earned which was shown in the return of income originally filed as income from other sources which was also referred to in Col. 13(d) of the Tax Audit report filed under Section 44AB of the IT Act. Even though initially the income from the interest was shown as income from other sources in the return of income, however, the Respondent had raised an additional ground before the Tribunal to allow the set off of such interest against the public issue expenses. The issue was examined by the Tribunal and was set aside for fresh adjudication by the Assessing Officer. During the course of fresh proceedings, an opportunity was given to the Respondent to file the details of interest on share application money. The Respondent stated that the details of interest income on share application money was already furnished at Annexure No. 7 of their letter dated 11.03.2003 at the time of original assessment. The verification of the said Annexure reveals that the Respondent had earned the interest income on FDRs placed with the bank, however, the period for which such FDRs were placed and the specific period of the interest earned was not found to have been mentioned. Under the circumstances, it was not possible to identify as to what portion of interest earned on FDRs was relating to the period prior to the allotment of shares or after the allotment of shares. Keeping in view the specific guidelines of the Tribunal in this regard and in the absence of specific working of interest for pre-allotment and post-allotment, the claim of the Respondent was not allowed and added to the total income under the head income from the other sources as was declared in the original return of income filed by the Respondent.

9. Coming back to the facts of the case, we may reiterate that the Respondent was statutorily required to keep share application money in the separate account till the allotment of shares was completed. Interest earned on such separately kept amount was to be adjusted towards expenditure for raising share capital. We are, therefore, of the opinion that interest earned was inextricably linked with requirement of company to raise share capital and was thus adjustable towards the expenditures involved for the share issue. Though learned counsel for

the Appellant contended that part of the share application money would normally have to be returned to unsuccessful applicants, and therefore, the entire share application money would not ultimately be appropriated by the Company, insofar as present case is concerned, we do not see how this factor would make any significant difference. Interest earned from share application money statutorily required to be kept in separate account was being adjusted towards the cost of raising share capital. In that view of the matter, we are of the opinion that the High Court was right in allowing such deduction.

10. In light of the above developments in the case, the question of law has been decided by this Court in case in Bokaro Steel Ltd. (supra), wherein the company was set up to produce steel. When the construction of plant was yet not completed, company earned interest on advances to contractor, rent from quarters let out to employees of the contractor as well as other income such as hire charges on plant and machinery let out to contractor, royalty on stones removed from its land. It was in this background that this Court held that the amounts were directly connected to and incidental to construction of plant by the company, amounts were capital receipts and not income from any independent source.

11. Further, the rationale of judgment of Bokaro Steel Ltd. (supra) was followed in *Commissioner of Income Tax vs. Karnal Co-operative Sugar Mills Ltd*[2].. In this case, the company had deposited certain amount with the bank to open letter of credit for purchase of machinery for setting up plant. On the money so deposited, it earned interest. In that background, this Court observed that this is not a case where any surplus shares capital money which was lying idle had been deposited in the bank for the purpose of earning interest. The deposit of money is directly linked with the purchase of plant and machinery.

12. The common rationale that is followed in all these judgment is that if there is any surplus money which is lying idle and it has been deposited in the bank for the purpose of earning interest then it is liable to be taxed as income from other sources but if the income accrued is merely incidental and not the prime purpose of doing the act in question which resulted into accrual of some additional income then the income is not liable to be assessed and is eligible to be claimed as deduction. Putting the above rationale in terms of the present case, if the share application money that is received is deposited in the bank in light of the statutory mandatory requirement then the accrued interest is not liable to be taxed and is eligible for deduction against the public issue expenses. The issue of share relates to capital structure of the company and hence expenses incurred in connection with the issue of shares are to be capitalized because the purpose of such deposit is not to make some additional income but to comply with the statutory requirement, and interest accrued on such deposit is merely incidental. In the present case, the Respondent was statutorily required to keep the share application money in the bank till the allotment of shares was complete. In that sense, we are of the view that the High Court was right in holding that the interest accrued to such deposit of money in the bank is liable to be set-off against the public issue expenses that the company has incurred as the interest earned was inextricably linked with requirement of the company to raise share capital and was thus adjustable towards the expenditure involved for the share issue.

13. In view of the forgoing discussion, we are of the view that the High Court was right in upholding the decision of the Tribunal dated 21.10.2011 that the interest income earned out of the share application money is liable to be set off against the public issue expenses. The judgment passed by the Division Bench of the High Court in remanding the matter to the Tribunal on other issues requires no interference.

14. The appeals are accordingly dismissed. The parties to bear their own cost.

Judgment Referred.

[1]*(1999) 236 ITR 315 (SC)*
[2]*(2000) 243 ITR 2 (SC)*