

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN "SMC" BENCH, COCHIN**

Before Shri George George K, Judicial Member

ITA No.496/Coch/2017 : Asst.Year 2001-2002

M/s.Muthoot Chitty Fund C/o.M/s.Rangamani & Co. Chartered Accountants CARD Bank Building 2 nd Floor, V.C.S.B.Road Allapppy - 688 001. PAN : AAIFM4840N.	Vs.	The Dy.Commissioner of Income-tax, Circle - 1 Thiruvalla.
(Appellant)		(Respondent)

Appellant by : Sri. R.Sreenivasan
Respondent by : Sri. A.Dhanaraj, Sr.DR

Date of Hearing : 08.11.2017	Date of Pronouncement : 08.11.2017
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ORDER

This appeal at the instance of the assessee is directed against the CIT(A)'s order dated 09.08.2017. The relevant assessment year is 2001-2002.

2. The solitary issue that was argued by the learned AR was whether the CIT(A) is justified in confirming the A.O.'s action in disallowing interest expenditure amounting to Rs.6,63,030 for the reason that there was diversion of borrowed funds.

3. Brief facts of the case are as follow:-

3.1 The assessee is a firm engaged in financing and chitty business. For the assessment year 2001-2002, the assessment u/s 143(3) read with section 147 of the Act was completed vide order dated 28.12.2006. In the said reassessment order, the Assessing Officer had made disallowance of interest expenditure amounting to Rs.6,63,030. The reasoning of the Assessing Officer in making the disallowance was that the assessee had diverted interest bearing funds for non-business purposes. The Assessing Officer had relied on the judgment of the Hon'ble Kerala High Court in the case of *CIT v. V.I.Baby & Co. [(2002) 254 ITR 248 (Ker.)]*, judgment of the Hon'ble Madras High Court in the case of *K.Somasundaram & Brothers v. CIT [(1999) 238 ITR 939 (Mad.)]* and the judgment of the Hon'ble Punjab & Haryana High Court in the case of *CIT v. Abhishek Industries Ltd. [(2006) 286 ITR 01 (P&H)]*.

3.2 Aggrieved by the order of the CIT(A), assessee preferred appeal to the first appellate authority. Before the first appellate authority, it was contended that funds have been diverted out of commercial expediency and relied on the judgment of the Hon'ble Apex Court in the case of *S.A.Builders v. CIT [(2007) 288 ITR 01 (SC)]*. The CIT(A), however, rejected the contentions raised by the assessee and upheld the disallowance made by the A.O. The relevant finding of the CIT(A) reads as follow:-

"I considered the appellant's explanation but unable to agree with them for a simple reason that the diversion has no business expediency and thereby, the Hon'ble Supreme Court's decision is not applicable to them. Further, had the investment been made for the sake of business purpose then, the appellant would have purchased the landed properties not in the name of partners children but in the name of partners to the least. In the absence of same, the fact of interest bearing fund diverted for non business purpose has been established beyond doubt and thereby, the disallowance has just been justified. Further, the appellant which is in finance business need not buy landed properties that too in the name partners children and argue that it was done for the sake of business expediency. Investment in landed property in the name of persons who have no business connection by the firm which is in the finance business has no justification whatsoever. This is a case where interest bearing fund has been diverted to the partners children who in turn utilized the same to purchase landed properties against which they have paid no interest to the firm. Had the interest been charged, the liability to pay interest on borrowed fund on the part of appellant could have come down, reasonably or at least to the extent the Assessing Officer has disallowed. This is not tenable since the appellant has got no benefit but simply been forced to bear additional liability. Another argument of the appellant that wherever income was earned that was offered in the hands of the firm and wherever there was a sale the capital gain was offered in the hands' of the firm, could not simply be accepted in the absence of credible evidence forthcoming in this regard. It is not the case of the appellant that the partners children in whose name the appellant claimed to have purchased the land, have literally been deprived of their right over the properties which were purchased. It is also not the case of the appellant that no borrowed fund had ever been diverted and thereby, no interest need be

disallowed. Considering all the above, reliance the Assessing Officer has placed to the decisions of the Hon'ble High Courts has rightly been justified and accordingly, the disallowance of interest proportionately made doesn't require further interference. As a result, the disallowance stands sustained and the appeal filed on this ground stands dismissed."

3.3 Aggrieved by the order of the CIT(A), the assessee has preferred the present appeal before the Tribunal.

3.4 The learned Counsel for the assessee reiterated the submissions made before the Income-tax authorities.

3.5 The learned Departmental Representative, on the other hand, supported the orders of the Assessing Officer and the CIT(A).

4. I have heard the rival submissions and perused the material on record. Admittedly a sum of Rs.36,83,500 was diverted to the children of the partners of the assessee-firm. The said amount has been utilized by the children of the partners of the assessee-firm for purchase of property in their name. The assessee has been incurring huge interest expenditure on the loans availed by it. The diversion of funds to the children of the partners of the assessee-firm cannot be for commercial expediency, since the diverted funds have been utilized by the children of the partners of the assessee-firm for purchase of properties in their own name. The assessee-firm has not been able to establish that the

investment of landed properties by the children of the partners of the assessee-firm is for the business purposes of the assessee-firm, and out of commercial expediency. Therefore, the Assessing Officer has correctly disallowed proportionate interest expenditure to the extent of funds diverted. Hence, I see no reason to interfere with the orders of the authorities below and I confirm the same. It is ordered accordingly.

5. In the result, this appeal filed by the assessee stands dismissed.

Order pronounced on this 8th day of November, 2017.

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 08th November, 2017.
Devdas*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT, Kottayam.
4. CIT(A), Kottayam.
5. DR, ITAT, Cochin
6. Guard file.

True copy

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin