

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' NEW DELHI**

**BEFORE SHRI SHAMIM YAHAYA, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 5312/Del/2019
Assessment Year: 2015-16**

ACIT, Special Range-2,
New Delhi.

Versus

Cleta Real Estate Pvt. Ltd.,
296, Forest Lane Sainik Farms,
New Delhi. .

PAN: AA ECC3876H

(Appellant)

(Respondent)

Appellant by : ShriLaxmi Narayan Aggarwal, Ld. Adv.
Respondent by : Ms.YagyaSainiKakkar, Ld. CIT/DR

Date of hearing : 07/07/2022
Date of order : 28/07/2022

ORDER

PER N.K. CHOUDHRY, J.M.

This appeal has been preferred by the assessee against the order dated 19.03.2019, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-2, New Delhi (in short "Ld. Commissioner") u/s. 250 of the Income-Tax Act, 1961 (in short 'the Act') for the assessment year 2015-16.

2. Brief facts, relevant for adjudication of the instant appeal, are that the assessee by filing its return of income on 23.09.2015 had declared an income of Rs.9,23,550/- under normal provisions of the Act and deemed income of Rs.9,24,547/- u/s. 115JB of the Act, which was selected for scrutiny through CASS and resulted into issuance of statutory notices u/s. 143(2) and 142(1) of the Act. The Assessing Officer observed in the assessment proceedings that the assessee during the F.Y. 2012-13 has issued 750 non-convertible debentures of face value of Rs.10 lacs each aggregating to Rs.75

croresredeemable after five years at a premium of Rs.7,23,870/- per debenture giving implicit return of 11.5%. In such manner, the redemption price of the debentures comes to Rs.17,23,870/-. It was further observed by the Assessing Officer that during the F.Y. 2013-14, the assessee has issued 860 non-convertible debentures of face value of Rs.10 lacs each, aggregating to Rs.86 crores which were redeemable after seven years at a premium of Rs.10,77,342/- per debenture giving an implicit return of 11%. Accordingly, the assessee has claimed a total amount of Rs.20,73,77,111/- on account of provision for payment of premium on redemption of these debentures for the F.Y. 2014-15 which is debited in the profit & loss account of the assessee.

2.1 On being asked to justify why the premium payable on redemption of debentures may not be disallowed, the assessee submitted that being a corporate assessee, the assessee is required to maintain its accounts on mercantile/accrual basis and accordingly, a sum of Rs.20,73,77,111/- being the proportionate amount of premium accrued for the year, has been booked under the head 'premium on redemption of debentures under Finance Expenses'. The assessee further claimed that by utilizing the money received on issuance of debentures, the assessee has earned taxable interest income amounting to Rs.20,76,47,522/- in the year under consideration. In such manner, the incurrance of expenses is duly relatable with the earning of income. The assessee further claimed that computation of income under the head 'business or profession' need to be computed in accordance with the method of accounting employed regularly. The amount of premium on debentures is nothing but interest. The said premium/interest is duly allowable u/s. 36(1)(iii) of the Act. Without prejudice, the said premium is duly allowable as business expenditure u/s. 37 of the Act. At last, the assessee claimed that the assessee has been following the mercantile/accrual basis and accordingly, the sum of Rs.20,73,77,111/- being the proportionate amount of premium accrued for the year, has been booked under the head 'premium on redemption of debentures under Finance Expenses'. The assessee before the Assessing Officer also relied upon the judgment of Hon'ble Supreme Court in the case of Madras Industrial Investment Corpn. Ltd. vs. CIT (1997) 225 ITR 802 (SC) and of Bombay High Court in the case

of CIT vs. Indian Rayon Industries Ltd. 236 CTR (Bom) 279 to justify the allowability of the premium payable on redemption of debentures.

2.2 The Assessing Officer after duly considering the submissions of the assessee and also the judgments referred, came to the conclusion that the facts of the cases are totally opposite to the facts of the Assessee's present case. In the cases referred by the assessee, the concerned assessee had issued debentures at a discount and claimed the discount expenses on a proportionate basis over the life of debentures to be redeemed and it was held to be an allowable expenditure on proportionate basis by the Hon'ble Supreme Court whereas in the present case, the assessee had issued debentures redeemable on premium, payment of which at the end of the term which is fixed for non-convertible debentures and upon which the debentures are to be redeemed is the flip side of a situation to a case where the assessee issues debentures at a discount. In a case of a discount, the assessee has the benefit of the funds which are realized from the issue of the debenture, over the term of the debentures. In the case of the premium, which the assessee pays, the premium paid on the date fixed for redemption consideration of the use of the funds by the assessee until such date as the debentures fall due for redemption.

2.3 Ultimately, the Assessing Officer held that the facts of the case of the assessee are exactly similar to a case law decided by Hon'ble Bombay High Court in the case of CIT vs. Raymond Ltd. (IT Appeal No. 188 of 2011), wherein the assessee had issued non-convertible debentures redeemable at premium. The assessee paid the entire amount due on redemption of such debentures along with premium in the relevant Financial Year and claimed a deduction for the premium payable made in the year of actual redemption of debentures. The Assessing Officer also quoted the conclusion of the decision of Hon'ble High Court wherein, it was held :

“The principle which has been laid down by the Supreme Court in Madras Industrial Investment Corpn. Ltd (supra) to hold that the additional liability equivalent to a discount represents revenue expenditure must, by analogy of reasoning, apply to

the premium which is paid by the assessee at the time of redemption of the debentures. In that view of the matter, the question which has been framed by the Revenue would have to be answered in the affirmative, in favour of the assessee. The actual premium paid upon the redemption of the debentures would have to be classified as revenue expenditure, in terms of the decision of the Supreme Court in Madras Industrial Investment Corpn. Ltd. (supra)”.

2.4 The Assessing Officer finally made the addition of Rs.20,73,77,111/- by holding that the assessee should claim the expenditure of premium on redemption of debentures at the time of actual redemption of such debentures and not on provisional basis every year during the tenure of such debentures. The Assessing Officer also made an addition of Rs.1,00,000/- u/s. 14A read with Rule 8D of the Income-tax Rules, 1962, which is not the subject matter before us.

3. The Assessee being aggrieved, challenged the addition involved in the instant appeal before the Id. Commissioner, who vide impugned order deleted the said addition by concluding as under:

*“6.1 **Ground no. 1.** This ground is directed against addition of Rs. 20,73,77,111/- disallowed by the AO on account of claim of premium on non- convertible debentures on proportionate basis.*

6.2 In F.Y. 2012-13, the appellant had issued 750 non-convertible debentures at Rs. 10,00,000/- each totalling Rs. 75 cr redeemable after five years at the premium of Rs. 7,23,870/- per debenture. In F.Y., 2013-14, appellant issued 860 non- convertible debentures at Rs. 10,00,000/- each totalling Rs. 86 cr redeemable after five years at the premium of Rs. 10,77,342/-per debenture.

6.3 The AO treated it as a future expenditure provisional in nature and not allowable. The AO also distinguished the case laws cited by

the appellant viz. Madras Industrial Investment Corporation Vs CIT 225 ITR 802 (SC) CIT Vs Indian Rayon Industries Ltd. 236 CTR 279 (Bom.). The addition was made by the AO relying on the case of CIT Vs Raymond Ltd. ITA 188/2011 (Bom.) holding that-

“The principle which has been laid down by the Supreme Court in Madras Industrial Investment Corporation additional liability equivalent to discount represents revenue expenditure and same applies to premium which is paid at the time of redemption.... The actual premium paid upon redemption of debenture would have to be classified as revenue expenditure.”

6.4 In appeal, the appellant has relied on the same case laws and has submitted that reliance of AO on Raymonds Ltd. case is misplaced as in this case, the issue of payment of premium on redemption of debenture was decided and allowed as revenue expenditure. The issue of pro- rata basis or on payment basis was never before the Court.

6.5 This argument is not correct as is clear from the reading of the quoted para of the order of the Court in Raymonds Ltd. case. It is clear that the issue of actual payment basis was the subject of discussion while deciding allowance of premium on redemption of debenture as revenue expenditure.

6.6 However, in the case of CIT Vs Jagjeet Industries 204 CTR 428 (Del.), the same issue has been decided in favour of the assessee allowing provisions for premium on debentures on pro- rata basis as accrued during the year. The decision of the jurisdictional Court on identical facts as that of the instant case is squarely applicable.

6.7 Considering the facts of the case, in the light of judgments of various Courts including jurisdictional High Court as mentioned above, the addition is not held to be justified and is deleted. This ground is allowed.”

4. The Revenue Department, being aggrieved, is in appeal before us. Ld. DR, at the outset, submitted that the Id. Commissioner has adopted a wrong approach in deciding the issue in favour of the Assessee.

5. On the other hand, the Assessee while relying upon the impugned order, submitted that the identical issue has already been decided by the Hon'ble Co-ordinate Bench in Assessee's own case, i.e., ITA No. 3770/Del/2018 and ITA No. 2938/Del/2018 for the AY 2014-15, decided on 08.07.2021, hence the instant appeal is not maintainable and liable to be dismissed.

6. Heard the parties and perused the material available on record. The issue involved in the instant appeal relates to the deletion of disallowance/addition of Rs.20,73,77,111/- on account of claim of premium on non-convertible debentures on proportionate basis. The Assessing Officer treated the same as future expenditure provisional in nature and not allowable accordingly, while relying upon the judgment in the case of CIT vs. Raymonds Ltd. (supra).

6.1 The Assessee before the Id. Commissioner claimed and tried to distinguish the facts of the decision in Raymond Ltd. case (supra). However, the Id. Commissioner found the same as not correct and held that in Raymond Ltd. case, the issue of actual payment basis was the subject of discussion while deciding allowance of premium on redemption of debenture as revenue expenditure. However, ultimately, the Id. Commissioner while relying upon the judgment rendered in the case of CIT vs. Jagjeet Industries, 204 CTR 428 (Del), allowed the claim of the assessee by holding that the same issue has been decided in favour of the assessee allowing provisions for premium on debentures on pro-rata basis as accrued during the year. The Id. Commissioner further held that the decision of the jurisdictional Court on identical facts as that of the instant case is squarely applicable.

6.2 We observe that the issue under consideration has already been decided by the co-ordinate bench in Assessee's own case referred above by conducting as under:

6. *After hearing both the parties and on perusal of the impugned orders, we find the only issue before us is, whether premium payable on redemption of debentures is allowable when which it is actually incurred in the year of redemption of the debentures or could be proportionately spread over the period prescribed for maturity of such debentures. This issue as noted by the Ld. CIT(A) is squarely covered by the decision of Hon'ble High Court in the case of CIT vs. Jagatjit Industries Ltd. (supra) wherein the Hon'ble High Court relied upon the ratio and principle laid down by the Hon'ble Supreme Court in the case of Madras Industrial Investment Corporation Ltd. wherein it was observed as under:-*

"Having heard learned Counsel for the parties, we are of the view that the question sought to be agitated before us is no longer examinable in the face of authoritative pronouncement of the Supreme Court in Madras Industrial Investment Corporation Ltd. v. Commissioner of Income Tax (supra).

That being so, the moment the debentures were issued, the liability had arisen against the assessee which would constitute an expenditure allowable under section 37 of the Act. What is argued by the revenue all the time is that the liability could not be spread over on a proportionate basis as has been done by the assessed in the instant case. A similar argument was advanced even before the Apex Court in Madras Industrial Investment Corporation Ltd. v. Commissioner of Income tax (supra). Repelling the contention that the liability cannot be spread over the number of years for which the debentures were issued, their lordship observed that the facts may justify the spreading of the liability over the ensuing years. Allowance of the entire expenditure in one year, observed their Lordship, might give a very distorted picture of the profits of a particular year.

There is in the light of the above authoritative pronouncement, no room for any contrary view. The fact that

the debentures could not have been redeemed on before the date of their maturity does not, in our opinion, make any material difference in so far as the application of the principle stated by the Supreme Court to the facts of the present case are concerned. What is important is that the liability to pay premium arises in the year in which the debentures were issued and could be proportionately spread over the period prescribed for maturity of such debentures. It matters little whether the debentures were redeemable at will or only upon maturity. The Tribunal was in that view perfectly justified in allowing the deduction claimed by the assessee."

7. This view has been reiterated by different High Courts in the following cases

a) CIT vs. First Leasing Company of India Ltd. (Madras High Court)- Tax case

b) National Engg. Industries Ltd. vs. CIT (cal.) 236 ITR 577

c) CIT vs. Tube Investments (India) Ltd. 261 ITR 753 (Mad.)

8. Thus, we do not find any infirmity in the order of the Ld. CIT(A) that Assessee's claim in respect of proportionate premium on redemption of debentures and in the profit and loss account on the proportionate basis is allowed. Therefore, the addition has rightly been deleted.

6.3 We have given thoughtful consideration to facts and circumstances of the instant case and do not find any reason and material to controvert the findings of the Coordinate bench in the said case on the basis of which the impugned order has been passed by the Ld. Commissioner, hence the impugned order do not warrant any interference as the same is an logical and reasoned order and does not suffer from any perversity and/or impropriety.

7. In the result, appeal filed by the Revenue Department stands dismissed.

Order pronounced in the open court on 28 /07/2022

Sd/-

(SHAMIM YAHAYA)
ACCOUNTANT MEMBER

Sd/-

(N.K. CHOUDHRY)
JUDICIAL MEMBER

*aks/-