

आयकर अपीलीय अधिकरण “सी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं. ITA No.1087/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2015-16)

ITO Corporate Ward-4(1) Chennai.	बनाम / Vs.	M/s. Mahadhan Energy Private Ltd. Bascon Futura SV, 4 th floor, 10/1, Venkatanarayana Road, T. Nagar, Chennai-600 017.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAKCM-1758-L		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri R. Clement Ramesh Kumar (CIT) -Ld. DR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri R. Sivaraman (Advocate)-Ld.AR

सुनवाईकी तारीख/ Date of Hearing	:	26-08-2024
घोषणाकी तारीख / Date of Pronouncement	:	05-11-2024

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year (AY) 2015-16 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 26-02-2024 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.147 r.w.s. 144 of the Act on 31-03-2022. The grounds taken by the revenue read as under: -

1. The order of the learned Commissioner of Income Tax (Appeals) in ITA No. ITBA/NFAC/S/250/2023-24/1061506985(1) dated 26.02.2024 for the Assessment year 2015-16 is erroneous in law, facts and circumstances of the case.

2. The learned CIT(A) has erred in fully deleting the addition of interest made by the AO of Rs.9,02,50,000/- without appreciating that :

(i) As per the loan agreement dated 15.05.2013 entered into between M/s SIHL & HCCPL, the said loan was on interest @ 9.5% per annum which was subsequently reduced to 7% per annum for the relevant year and 8% and 9% per annum for the subsequent two years w.e.f. 01.04.2014.

(ii) As per the subsequent tri-party agreement dated 27.06.2014 entered into by the assessee with the said two parties namely M/s SIHL & M/s HCCPL, the assessee was entitled to enjoy all the rights, interest, privileges etc., of the lender i.e., M/s SIHL and therefore interest income of Rs.6,65,00,000/- @ 7% p.a. had accrued to the assessee during the relevant year.

3. For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT (A) may be set aside and that of the Assessing Officer be restored.

As is evident, the sole issue that arises for our consideration is addition of interest income.

2. The Ld. CIT-DR advanced arguments supporting the case of Ld. AO and justified the addition of interest income. The Ld. AR also advanced arguments supporting the case of the assessee. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Assessment Proceedings

3.1 During re-assessment proceedings, Ld. AO examined the issue of interest to be received by the assessee from an entity by the name M/s Haldia Coke and Chemicals Pvt. Ltd. (HCCPL). It transpired that during this year, the assessee entered into a tripartite agreement with M/s Shriram Holdings Ltd. (SHL) and HCCPL. SHL had earlier advanced sum of Rs.95 Crores to HCCPL which was assigned to the assessee under tripartite agreement. The assignment was recorded in the books of the assessee as book entry only. In consideration of the same, the assessee issued 9,50,000 numbers of zero-coupon rate compulsorily convertible debentures of Rs.1000/- each to SHL. The assessee

submitted that HCCPL was not paying interest to SHL and the assessee has not received any interest from HCCPL.

3.2 The Ld. AO alleged that the assessee raised money by issuing debentures to SHL without any business and valuation certificate and same amount was advanced to HCCPL. The said amount was written-off subsequent In AY 2018-19 which would show that the transaction was a colorable device to avoid taxation. It was also noted that HCCPL paid interest of Rs.740.82 Lacs to SHL. Accordingly, the amount of Rs.95 Crores was added to the income of the assessee u/s 68 as unexplained cash credit. The assessee raised loan of Rs.95 Crores from SHL and lent the same to HCCPL. The Ld. AO computed deemed interest of 9.5% and added interest amount of Rs.902.50 Lacs to the income of the assessee.

Appellate Proceedings

4.1 The assessee assailed the assessment before Ld. CIT(A) by way of elaborate written submissions which have been extracted in the impugned order. The assessee, inter-alia, submitted that HCCPL did not receive any loan from the assessee directly but it received loan from SHL which was subsequently assigned to the assessee. The assessee did not receive any interest and also did not pay any interest.

4.2 The adjudication of Ld. CIT(A), on this issue, is contained in paras 7.1.3 onwards. The Ld. CIT(A), in terms of tripartite agreement, considered assessee's submissions that the assessee only received a right to collect the amount from HCCPL in lieu of the securities sold by the assessee to SHL and there was no cash transaction in any kind. The assessee submitted that this was merely a pass-through book entry and the money was neither sourced from the assessee nor destined to it.

With reference to issue of interest, it was submitted by the assessee that the money did not belong to him and therefore, receiving interest from HCCPL was out of question.

4.3 The Ld. CIT(A) concurred that no addition could be made u/s 68 in such a case. The amount was paid by SHL to HCCPL through banking channels. The assessee was not involved in the transfer of this amount from his bank. The appellant furnished the purpose of obtaining book entry through a Tripartite Agreement, where the objective was mentioned. This transaction could not be held to be cash credit in the book of the assessee. Therefore, the addition made by Ld. AO u/s 68 was deleted. The amount was neither received nor paid by the assessee and the assessee being only a facilitator by adopting the said entry through an agreement. If interest to be charged from the said investment, then interest has to be paid from whom the said amount was received. As the Ld. AO himself admitted that the transaction was a sham transaction, no interest could be charged on such sham transaction. Hence, the addition made by AO on notional interest was also deleted. Aggrieved by deletion of interest income, the revenue is in further appeal before us.

Our findings and Adjudication

5. From the facts, it emerges that the assessee has not received any payment through banking channels. The money has been advanced by SHL to HCCPL. By way of tripartite agreement, the assessee has received only a right to receive the said debts. As against this, the assessee has issued zero-coupon rate compulsorily convertible debentures. The aforesaid entries are merely pass-through book entries and the money has neither been sourced from the assessee nor

destined to it. In such a case, no notional interest could be computed against the assessee on this transaction. It is settled law that Income Tax could be levied only on real income and not on notional income unless permitted by law. Therefore, we concur with the findings of Ld. CIT(A) in the impugned order.

6. In the result, the appeal stands dismissed.

Order pronounced on 5th November, 2024

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / **VICE PRESIDENT**

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated :05-11-2024
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Chennai.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF