

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI

श्री चंद्र पूजारी, लेखा सदस्य एवं
श्री वी. दुर्गा राव, न्यायिक सदस्य के समक्ष
BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER &
SHRI V. DURGA RAO, JUDICIAL MEMBER
आयकर अपील सं./ **I.T.A. No.463/Mds/2015**
& **C.O.No.33/Mds/2015**
(निर्धारण वर्ष / Assessment Year : 2011-2012)

The Assistant Commissioner of
Income Tax,
Corporate Circle 3(1),
Chennai 600 034.

M/s. Tamil Nadu Water Investment Co.
Ltd,
1st floor, Polyhose Towers,
No.86, Mount Road,
Guindy,
Chennai 600 032.

(अपीलार्थी/Appellant)

[PAN:AABCT 8153B]

(प्रत्यर्थी/Respondent/Cross Objector)

अपीलार्थी की ओर से / Appellant by : Shri. N. Rangaraj, IRS, CIT.

प्रत्यर्थी की ओर से / Respondent by : Shri R. Viswanathan, C.A.,

सुनवाई की तारीख/Date of hearing : 08.04.2015

घोषणा की तारीख /Date of Pronouncement : 08.04.2015

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

The appeal by Revenue and Cross -objection by assessee are directed against the order of Commissioner of Income Tax (Appeals)-

III, Chennai dated 20.10.2014. The Revenue has raised the following ground:-

"2.1 The Id. CIT(A) erred in deleting the disallowance of interest payable claimed to the tune of ₹11,46,45,038/-".

The Cross-objection filed by assessee is in support of the order of the Commissioner of Income Tax (Appeals).

2. We have heard both the parties and perused the material on record. A similar issue was considered by the Tribunal in assessee's own case in ITA Nos.236 & 237/Mds/2014 and Cross Objection Nos. 25 & 26/Mds/2014 vide order dated 06.06.2014, wherein the Tribunal held as under:-

We have heard both sides, perused the materials on record and gone through the orders of authorities below. The stand taken by the Revenue is that the interest to be paid by the assessee had not been crystallized in the year under consideration. We find that the issue involved in this appeal has already been considered by the Tribunal in assessee's own case for the assessment year 2008-09 and passed a detailed order in I.T.A. No. 1242/Mds/2012 vide order dated 02.08.2012, wherein the Tribunal has held as under:

"4. After considering the rival submissions and perusing the orders of the lower authorities and materials available on record, we find that similar issue had arisen before the Tribunal in assessment year 2003- 04 in the case of assessee itself and the Tribunal vide its order dated 20.11.2007 passed in I.T.A.Nos.29/Mds/2007 and 2508/Mds/2007, had allowed the claim for deduction of interest by observing as under:

“2.5 We have heard both the counsels and perused the relevant records. It will be worthwhile here to refer to the clause 1.2 of article I of the loan agreement which is relevant to the issue under consideration, as under: "Interest:- TWICL shall pay to GOTN and IL&FS the respective interest on the principal amount of the Term Finance availed of and outstanding from time to time at the rate as mentioned in the Schedule I hereto and payable on the interest payment date. TWICL shall not be required to pay interest up to the expiry of the moratorium period being 5 years from the operation date. "Interest not paid shall be accrued as arrears and added to the principal outstanding at the end of every calendar quarter. The interest shall be calculated on the basis of 365 days a year and the number of days elapsed with quarterly rests:

(a) Subsequent to the end of the period stated above, TWICL shall pay to GOTN and IL&FS interest on the respective principal amount of the term finance outstanding from time to time quarterly in arrears in each year on the interest payment date.”

2.6 From a reading of the aforesaid, it is quite apparent that interest has accrued and the payment thereof has been postponed. It is only upon accrual that this interest is being added to the principal and the principal amount is consequently increasing. The reference of the learned Commissioner of Income Tax (Appeals) to provisions of Explanation 3(c) of Section 43B(d) of the Act is not relevant. Section 43(B) which deals with certain deductions to be only on actual payment includes vide clause (d), "any sum payable by the assessee as interest on any loan or borrowing from any public financial institution (or a State Financial Corporation or a State Industrial Investment Corporation), in accordance with the terms and conditions of the agreement governing such loan or borrowing"

Explanation 3(c) in this regard reads as under.-

"For the removal of doubts, it is hereby declared that a deduction of any sum, being interest payable under clause (d) of this section, shall be allowed if such interest has been

actually paid and any interest referred to in that clause which has been converted into a loan or borrowing shall not be deemed to have been actually paid."

2.7 From a reading of the above, it is clear that the said clause pertains to sum payable by the assessee as interest on loan or borrowing from any public financial institution. Public Financial Institution which has been referred to in Explanation (4) of the Income Tax Act which is defined in Section 4A of the Companies Act, 1956 read as under:-

"(1) Each of the financial institutions specified in this subsection shall be regarded for the purposes of this Act, as a public financial institution, namely:-

(i) The Industrial Credit and Investment Corporation of India Limited, a company formed and registered under the Indian Companies Act, 1913 (7 of 1913):

(ii) The Industrial Finance Corporation of India, established under section 3 of the Industrial Finance Corporation Act, 1948 (15 of 1948);

(iii) The Industrial Development Bank of India, established under section 3 of the Industrial Development Bank of India Act, 1964 (18 of 1964);

(iv) The Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956);

(v) The Unit Trust of India, established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963).

(vi) The Infrastructure Development Finance Company Limited, a company formed and registered under this Act.;

(2) Subject to the provisions of sub-section (1), the Central Government may, by notification in the Official Gazette, specify such other institution as it may think fit to be a public financial institution:

Provided that no institution shall be so specified unless –

(i) It has been established or constituted by or under any Central Act, or

(ii) Not less than fifty one per cent of the paid up share capital of such institution is held or controlled by the Central Government.

2.8 Admittedly, neither the Government of Tamil Nadu nor Infrastructure Leasing & Financial Services Ltd. IL&FS fall within the definition of Public Financial Institution. Hence, the learned Commissioner of Income Tax (Appeals)'s premise that Explanation 3(c) of Section 43B(d) is applicable, is erroneous. As we have already held earlier that as per the reading of loan agreement, the interest amount has very much accrued and the liability has crystallized. In this view of the matter, we hold that order of the authorities below is liable to be set aside and assessee's claim be allowed."

5. The DR could not point out any distinguishable features in the above quoted order of the Tribunal and neither he could bring any material on record to show that the above order of the Tribunal was varied in appeal by any higher forum. We, therefore, respectfully following the above quoted order of the Tribunal, confirm the order of the CIT(A) and dismiss the grounds of appeal of the Revenue."

3. Being so, respectively following the above order of the Tribunal, we are inclined to dismiss the appeal of the Revenue for this assessment year also. So far as, the Cross-objection is concerned, this is in support of the order of the Commissioner of Income Tax (Appeals). Since we have confirmed the order of the Commissioner of

Income Tax (Appeals), the Cross-objection filed by the assessee is dismissed as infructuous.

4. In the result, the appeal filed by the Revenue in ITA No.463/Mds/2015 and Cross Objection No.33/Mds/2015 are dismissed.

Order pronounced on Wednesday, the 8th of April, 2015, at Chennai.

Sd/-

(वी. दुर्गा राव)

V. DURGA RAO

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई/Chennai.

दिनांक/Dated:08.04.2015.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant 2. प्रत्यर्थी/ Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF.

sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य/ ACCOUNTANT MEMBER