IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 1284 of 2018

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PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL AHMEDABAD
Versus
PLASTENE INDIA LTD
==
Appearance:
MRS MAUNA M BHATT(174) for the APPELLANT
for the RESPONDENT(s) No. 1
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CORAM: **HONOURABLE MS.JUSTICE HARSHA DEVANI**
and
HONOURABLE DR.JUSTICE A. P. THAKER

Date : 19/11/2018

ORAL ORDER
(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. By this appeal under section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the appellant has called in question the order dated 10.5.2018 made by the Income Tax Appellate Tribunal, "D" Bench, Ahmedabad (hereinafter referred to as "the Tribunal"), by proposing the following question stated to be a substantial question of law:

> *"Whether on the facts and in the circumstances of the case and in law, the Appellate Tribunal has erred in law and on facts in deleting the addition of Rs.1,96,33,029/- made on account of Letter of Credit (LC) discount charges u/s 40(a)(ia) of the I. T. Act?"*

2. The assessment year is 2008-09 and the relevant accounting period is the year ending on 31.3.2008.

3. The assessment in the case of the respondent-assessee

was completed under section 143(3) of the Act on 28.3.2013 determining total income at Rs.6,82,35,270/-. Thereafter, the assessment came to be reopened under section 147 of the Act on the ground that during the period under consideration, the assessee Company had debited payment of interest of Rs.7,26,34,754/-, which included Letter of Credit (LC) discount charges of Rs.1,96,33,029/-. According to the Assessing Officer, the finance charges debited to the profit and loss account were in the nature of interest under section 2(28A) of the Act and thus, under the provisions of the Act, there was a requirement to deduct tax at source. He, accordingly, was of the view that the assessee was liable to deduct tax at source under section 195 of the Act on the amount of Rs.1,96,33,029/-, that is, total LC interest and therefore, the total interest and LC charges of Rs.1,96,33,029/- were required to be disallowed.

4. After considering the submissions advanced by the assessee, the Assessing Officer did not accept the contention of the assessee and held that total LC interest of Rs.1,96,33,029/- was paid during the year and was adjusted against credit amount of Rs.1,67,879/- and the net amount of Rs.1,94,65,149/- was shown in profit and loss account. These LC interest/charges were paid to various parties who were all residents. As per the terms of supply, the assessee had furnished irrevocable LC payable after a specified number of days from the date of bill of lading. For the period of specified number of days for which the assessee availed credit, the assessee had to pay finance charges or what is known in business parlance as “Usance Interest”. The assessee Company had debited the finance charges to the profit and

loss account which were in the nature of interest under section 2(28A) of the Act and thus, there was a requirement to deduct TDS on Rs.1,96,33,029/-. Therefore, the provisions of section 40(a)(i) of the Act were attracted. He, accordingly, disallowed expenses to the tune of Rs.1,96,36,029/-. Being aggrieved, the assessee carried the matter in appeal before the Commissioner of Income Tax (Appeals), who by an order dated 26.8.2016, allowed the appeal and set aside the disallowance. Revenue went in appeal before the Tribunal, which concurred with the view adopted by the Commissioner (Appeals) and dismissed the appeal.

5. Mrs. Mauna Bhatt, learned Senior Standing Counsel for the appellant, assailed the impugned order made by the Tribunal on the grounds set out by the Assessing Officer in the order passed under section 143(3) read with section 147 of the Act. It was submitted that the Tribunal has failed to appreciate the material on record in proper perspective by holding that the LC discount charge is reimbursement of expenses to the suppliers of goods as additional costs towards purchase of goods and hence, the appeal requires consideration and deserves to be admitted on the question of law as proposed or as may be deemed fit by this court.

6. This court has considered the submissions advanced by the learned Senior Standing Counsel for the appellant and has perused the orders passed by the authorities below.

7. The assessee is engaged in the business of manufacturing of plastic products like FIBC, fabrics, woven and laminated sacks, tarpaulin, etc. In response to the notice

under section 148 of the Act, it was the case of the assessee before the Assessing Officer that the amount in question, viz., the LC discount charges is actually reimbursement of cost/expenses incurred by their suppliers under commercial arrangement and was nothing but additional cost towards purchase of goods. The assessee explained the commercial arrangement as under:

(a) The assessee agreed to purchase raw material from their supplier with normal credit period of 30 days.

(b) In respect of their sale proceeds mainly from export of goods, the credit period allowed is generally 45 to 60 days.

(c) Since there was some time gap for discharging their purchase commitments, they utilised their buyer's credit and opened LC in favour of their supplier and the payment due under such LC was 60 to 75 days from the date of purchase.

(d) Under the agreed arrangement, their supplier discounted the LC with the bank and the bank deducted some amount for early payment and they had to reimburse their supplier such charges deducted by the bank.

(e) Their supplier informed them the amount of bill discount charges and they credited the supplier's account and debited the LC discount charge account. In effect, in addition to the invoiced cost of goods credited to supplier's account, there is additional credit in their account towards reimbursement of cost incurred by them towards early discounted LCs resulting into additional cost towards purchase of goods.

8. It was the case of the assessee that the LC discount charges had no element of payment of any interest to bank or the supplier and it was nothing but a reimbursement of the expenses incurred by their supplier, and, therefore, the provisions of section 194A of the Act were not attracted.

9. The Commissioner (Appeals), after appreciating the material on record, has found that the LC discount charges are in the nature of reimbursement of cost incurred by the suppliers under the agreed arrangement and it is also an additional cost for the assessee for the purchase of goods. No interest payments are made to the supplier by the assessee. The assessee is paying only the cost of goods that it has purchased from the suppliers, firstly by way of LC and secondly, by reimbursing the bank charges. It is the bank from whom the LC has been drawn which receives negotiation interests along with bank charges. Under section 194A(3)(iii)(a), the provisions of section 194A are not applicable to a banking company regulated by the Banking Regulation Act. Therefore, the assessee is not required to deduct tax at source. Considering all these facts, the Commissioner (Appeals) was of the opinion that the Assessing Officer was not justified in disallowing Rs.1,96,33,029/- under section 40(a)(ia) of the Act on account of failure of the assessee to deduct tax at source and deleted the addition. The Tribunal, in the impugned order, has concurred with the findings recorded by the Commissioner (Appeals).

10. From the facts as emerging from the record, it is evident that the assessee had opened LC in favour of its suppliers who

had discounted the same with the bank. On account of early payment, the bank had deducted some amount which the assessee was liable to reimburse to its suppliers. Accordingly, the assessee had credited the suppliers' account with the amount of bill discount charges and had debited the LC discount charge account. The amount credited to the suppliers' account was in the nature of reimbursement of cost incurred by the supplier towards early discounting of the LC resulting into additional cost towards purchase of goods. Thus, the assessee has not made payment of interest to the bank or to the supplier and the amount credited to the suppliers' account is towards reimbursement of expenses incurred by the suppliers. The Commissioner (Appeals), therefore, was wholly justified in holding that the provisions of section 194A of the Act would not be attracted and consequently, the question of making any disallowance under section 40(a)(ia) of the Act would not arise and in deleting the disallowance. The Appellate Tribunal has not committed any infirmity in affirming the view adopted by the Commissioner (Appeals).

11. In the absence of any infirmity in the impugned order passed by the Tribunal, the same does not give rise to any question of law, much less, a substantial question of law, so as to warrant interference. The appeal, therefore, fails and is, accordingly, summarily dismissed.

(HARSHA DEVANI, J)

(A. P. THAKER, J)

B.U. PARMAR