

**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT
JAIPUR**

D.B. Income Tax Appeal No. 343 / 2005

Sunil Synchem Ltd., 17/18, old industrial area, Alwar through its
Chairman cum Managing Director Anil Kumar Khaitan S/o late Shri
S.N. Khaitan aged about 49 years.

----Appellant

Versus

Commissioner of Income-Tax, Alwar.

----Respondent

For Appellant(s) : Mr. Sanjay Jhanwar.

For Respondent(s) : Mrs, Parinitoo Jain.

HON'BLE MR. JUSTICE K.S. JHAVERI

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

Judgment

Per Hon'ble Jhaveri J.

24/01/2017

1. By way of this appeal, the appellant has challenged the judgment and order of the Tribunal whereby the Tribunal has partly allowed the appeal for statistical purpose and modifying the order of the CIT(A).
2. This Court while admitting the appeal on 01.12.2005 has framed the following substantial question of law:

“Whether the amount of Rs.3,55,850/- as difference of interest payable to the Indian Overseas Bank, coming to the notice of the assessee-appellant during the year under consideration on reconciliation of accounts with the Bank could be disallowed on the ground that it did not pertain to the year under consideration?”

3. Counsel for the appellant has taken us to para 11 of the order of the Assessing Officer, which reads as under:

"The assessee Co. credited a sum of Rs.207.71 lacs in the P&L appropriation a/c. The assessee company was required in income. It filed reply vide letter dated Feb.19,1998. As per this reply, the amount represented the liabilities which was written back consequent upon waiver of partial interest by the institutions as a part of scheme approved by the appellate authority for industrial and financial reconstruction vide their order dated 2nd April, 1993. The break-up of the amount written back is as under:-

ICICI	Rs.17147051
IRBI	Rs.1460054
RIICO	Rs.1560245
RFC	Rs.959835
IUB	(-)Rs.355850

In respect of ICICI, a sum of Rs.10178520 was added back u/s 43B from the assett. Years 1989-90 to 1991-92. The amt. Written off is Rs.17147051/. The company offered the amount of Rs.6968531 for taxation vide letter dated Rb. 19, 1998 subject to the claims made in subsequent paragraphs of that letter. In R/o RIICO a sum of Rs.4266861/- was added u/s43B. The assessee waiver of Rs.1560245/. The balance amount of Rs.2706636/- has been funded back. As per the company, funding outstanding interest into loan means that the interest has been paid and a new loan into picture, hereinafter the assessee claimed a sum oe Rs.2706636/ u/s 43B. In respect of RFC, a sum of Rs.2706636/- u/s 43B. A sum of Rs.95985 has been waived. As per assessee company, a sum of Rs.1096972 has been converted into loan. Therefore, the outstanding interest should be treated as paid and should be allowed as reduction. In respect of IRBI the amount added u/s 43B amounted to Rs.1531492 while the waiver is of Rs.1460054/. Since the write back is less than the amount u/s.43B, therefore, no addition is required to be made I/s.41(1) of the Income Tax Act.

In respect of 10B, it was mentioned that the assessee has made a short provision of Rs.355850/-. Therefor, the assessee company made a claim that a sum of Rs.355850/- should be allowed as deduction. However, another submission was also made vide letter dated February 1998. According to the 'A' company, the remission will be completed when the assessee company pays back the amounts which remains outstanding after write off part of the interest. Hence, remission is not complete and no amount can be added u/s 41(1) of the Income Tax Act.

After considering the above reply of the assessee, letters were sent to RFC and RIICO. The assessee company is submitting that the interest which has remained outstanding after write off has been converted into a loan, and therefore, outstanding interest should be treated as paid and deduction allowed u/s 43B. It is pertinent to mention that RFC and RIICO are maintaining their a/cs on cash basis. If the outstanding interest has been received by those concerns and has been converted into fresh loan, then those amount should be taxable in their hands as income on cash basis. Replies have been received from RFC and RIICO which is reproduced for ready reference:-

From RFC letter:- "The Corporation is following cash system of accounting and interest realized by it is offered to tax in the year of receipt. Interest funded by the Corporation is not treated as income. In the year of receipt of the funded interest is offered to tax by the Corporation. A separate account under memorandum books of accounts is opened for maintaining the account of funded interest. Hence, it does not form part of basic books of accounts.

The Corporation had funded the interest charged from the unit vide decision taken by the Board of Directors of the Corporation in their meeting held on 7.11.1997. This was done in pursuance of orders of AAIFR. So far as the details of simple interest and penal interest levied for the financial year 1995-96 to 92-93 is concerned, it is to inform you that the details may be collected directly from our branch office, Alwar."

From RIICO letter- "With reference to above, the information is under preparation and will be submitted within a short time. It is submitted that the corporation is following the cash system of accounting in case of interest realisation. Accordingly, as and when the interest is received by the Corporation, the same is treated as income of the corporation and offered for the tax. The same treatment has been given in the instant case. The funded interest is treated as income only as and when the amount is actually received by the corporation. The corporation keeps memorandum books of accounts for maintaining the record of interest account of the parties.

In the instant case of corporation has funded the overdue interest and waived the penal interest. Necessary details will be given afterwards"

Copies of the above-referred letters were supplied to the 'a' company. The relevant part of the reply is as under:-

"Now we would like to draw your kind attention to the page No.2 of the said Deed of modification agreed and signed by RFC under the sub-heading of Repayment Scheduled, point No.(iii), which clearly states as under: "In addition to the above a separate loan account of the Borrower Company will be opened by the Corporation under the name and style as Funded Interest Term Loan Account as follows:

Outstanding Interest of Rs.2957078/ as a 01.10.1992 shall be funded in this loan account at zero rate of interest. This funded interest term loan shall be payable in 24 equal quarterly installments w.e.f. 01.10.1994." The same wording is used in the Deed of Modification executed with RIICO, submitted with your goodself. From the above it is very clear that the liability of interest has been discharged and new term loan name Funded Interest Term Loan Account has come into existence. In view of the above the amount of interest converted into term loan should be treated as payment and therefore the said amount may kindly be allowed to the to the company. The company has paid Rs.488600/- to RIICO and Rs.446425 to RFC during 1994-95 but not claimed as deduction as it is repayment of Term Loan."

I have considered the submission of the assessee company and have gone through the replies filed by RFC and RIICO. As per section 43B of the Income Tax Act, any deduction which is otherwise allowable in respect of any sum payable as interest on any loan or borrowing from some specific institution in accordance with the terms & conditions of the agreement governing such loan or agreement is to be allowed only in computing the income referred in Section 28 of that previous year in which such sum is actually paid by him. The word actually has been used before the word paid. The dictionary meaning of the word actually in relation to finance means something actually received. The financial institutions RIICO and RFC are maintaining their accounts on cash basis and the interest which has been funded back to the assessee company has not been offered for taxation. It means that interest has not been actually received by those concerns. In respect of the assessee company also, it cannot be said that the amount of interest has been actually paid. Therefore, I am not inclined to accept the contention of the assessee company, that the amount of interest which has been funded back should be allowed as deduction u/s. 43B. The Central Board of Direct Taxes had an occasion to consider the allowability of sales-tax u/s 43B in view of the deferral schemes provided by the State Governments. The CBDT vide circular No.254A dated 25.09.1987, observed at para 4 of the circular- "The matter has been examined in consultation with the Ministry of Law and the various States Governments. The Ministry of Law has opined that if State Governments make an amendment in the sales-tax Act, to the effect the sales-tax deferred in the scheme shall be treated as actually paid, and such a deemed provision will meet the requirements of section 43B." In view of the above circular, it is clear that until and unless as a rule of law is made by RFC and RIICO that interest deferred under the so-called deferred scheme is treated as actually paid, the interest cannot be treated as actually paid. Obviously there is no such provision in the rules & regulations of the financial institutions, because they are not offering

such income for tax on cash basis. Hence, the so-called funded-back interest is not allowed as interest u/s. 43B. In respect of another submission that the remission of liability is not taxable u/s.41(1) of the Income Tax Act for the assessment year under consideration on the plea that the remission is conditional.

I have gone through the agreement. As per this agreement a settlement has been arrived at. In the event of default, on the part of the assessee, financial institution, or written notice to the assessee company, were entitled to withdraw concessions. Therefore, the concession was final and in case of default, such concession could have been withdraw after receipt of notices. It is, therefore, held that remission of liability of taxable u/s 41(1) of the Income Tax Act, for the year under reference. In view of the above direction, the amount which is required to be added back u/s. 41(10) of the Income Tax Act is as under:-

Remission of Liability by ICICI 6968531/-

No deduction is allowed in respect of

so-called funding back of interest by RIICO and RFC. In respect of IOB, the provision in earlier years was made less and therefore, the same cannot be allowed in the assessment year under consideration. Therefore, the claim of Rs.355850/- is rejected. Hence a sum of Rs.6968531/- is added u/s 41(10) of the Income Tax Act."

4. He has further contended that the CIT(A) as in para 18 considered the case as under:

"In ground No.11, the appellant has claimed deduction for interest payable to IOB for Rs.3,55,850/-. It was pointed out that in terms of the claim approved by AAIFR there were partial waiver of interest. The effect of the same was given during the year. While reconciliation of the accounts with the Financial Institutions it was noticed that provision for interest payable to IOB is less by Rs.3,55,850/-. Accordingly, the effect during the year and allowable as deduction. The A.O. was of the view that the liability did not pertain and therefore, not allowable. It was

pointed out that on the basis of the claim the A.O. has himself brought to tax an amount of Rs.69,68,531/- u/s 41(i) though this waiver pertains to the earlier years. It was thus argued that when A.O. is charging to tax the waiver of interest as income then there is no reason to not allow the short provision of interest which was noticed during the year on reconciliation. I have considered the argument of the appellant and find force in it. Since, the difference is located during the year on conciliation of account it is a liability for the year and therefore, the A.O. is directed to allow the claim of interest payable to IOB at Rs.3,55,850/-"

5. However, Tribunal while considering the case has reversed the finding of CIT(A) and held that if the credit amount which has been taken by the Assessing Officer, the CIT(A) has rightly given. Therefore, he contended that the appeal deserves to be allowed.
6. Counsel for the respondent has supported the order of the Tribunal and contended that the income which has been claimed is required to be claimed for the relevant year.
7. Heard counsel for both the parties.
8. In view of the figures which have been referred to by the Assessing Officer and the reasoning adopted by the CIT(A), we are of the opinion that if the income is to be considered then the loss is also to be considered for the relevant year.
9. In that view of the matter, the appeal deserves to be allowed and the issue is answered in favour of the assessee and against the department.

10. The appeal stands allowed.

(VINIT KUMAR MATHUR)J.

(K.S. JHAVERI)J.

Asheesh Kr. Yadav/74

RAJASTHAN HIGH COURT



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