

ORDER SHEET

ITA NO.467 OF 2008
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION(INCOME-TAX)
ORIGINAL SIDE

COMMISSIONER OF INCOME TAX, KOLKATA-II
Versus
WEST BENGAL INFRASTRUCTURE DEVELOPMENT FINANCE
CORPORATION LTD.

BEFORE:

The Hon'ble JUSTICE GIRISH CHANDRA GUPTA

The Hon'ble JUSTICE ASHA ARORA

Date : 20th June, 2016.

MR.M.P.AGARWAL, MR.F.GAFFER, ADVOCATES FOR APPELLANT
MR.J.P.KHAITAN,SR.ADVOCATE, MR.ANANDA SEN,ADVOCATE FOR RESPONDENT

The Court : The appeal is directed against a judgment and order dated 21st September, 2007 passed by the Income Tax Appellate Tribunal "E" Bench, Kolkata in M.A. No. 38/Kol/2007 arising out of ITA No.395/Kol/2006 pertaining to the assessment year 2002-03, by which the order dated 25th August, 2006 passed in

ITA No.395/Kol/2006 was varied. The order dated 25th August, 2006 was as follows:-

“On hearing the rival submissions on this issue, we could not, however, persuade ourselves to agree with the contention of Dr.Pal as because the case laws cited by him are not specific on the issue in hand. Further, in our considered view, erratic change in taking decision by the State Government machinery as to whether interest will be paid or not at a particular rate cannot spellbound the Income-tax department to act according to their whims and caprices. With this considered view, we are unable to accept the contention of Dr.Pal and reject the same.”

The aforesaid order was subsequently substituted in a miscellaneous application by an order dated 21st September, 2007 which is as follows:-

“On hearing the rival submissions on the issue, in the peculiar set of facts and circumstances of the case, we had to agree that the petitioner-applicant had no option for the rate of interest decided by the State Government. Accordingly, Dr.Pal’s contention is to be accepted and grounds No.IV to IX are to be allowed in favour of the assessee”.

The question of law formulated at the time of admission of the appeal on 18th August, 2008 reads as follows:-

“i) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was justified in modifying an order passed by it after considering the crux of the issue involved under a miscellaneous application by a non speaking order, by simply stating that there had been a factual mistake. In passing the impugned order the Ld. Tribunal exceeded its jurisdiction under Section 254(2) of the Income Tax Act, 1961 ?”

The Assessing Officer, in his judgment and order passed under section 143(3) of the I.T. Act, dated March 30, 2005, had made addition of Rs.216.08 crores, for the following reasons:

“(i) Interest income on loans & advances to Govt. of West Bengal and Interest on deposit with Pay and Accounts Office, Kolkata.

It was noted as per notes on Accounts filed with audited accounts at Col.1(ii)(a) and Col.7(ii) that it has been mentioned that the interest income on loans and advances given to Govt. of West Bengal for the month of March, 2002 will be considered at the time of realization. Similarly it was noted that at Col.1(ii)(b) and Col.8 it has been mentioned that interest in deposit with Pay &

Accounts Office, Kolkata for the entire year will be considered at the time of realization. Accordingly, it was queried to assessee that since mercantile system of accounting is being followed, why the amount involved of Rs.216.08 crore will not be added to total income.

In response, it was submitted that income from investments on loans and advances amounting to Rs.4,478 lakhs has not been considered as the same has not been received subsequently in April, 2002 and that the fundamental accounting assumption of consistency and accrual had been followed in the preparation and presentation of financial statements.

As regards interest on deposit with pay & Accounts Office, it was submitted that the very nature of interest is uncertain as it is subject to changes from time to time and based upon budgetary and administrative policies of the Government three letters (photocopies) of Government were filed regarding applicable interest rate and it was stated that till date no interest was disbursed and accordingly the company has decided to follow AS-9 as regards

revenue recognition and that income will be recognized on accrual basis.

The submissions were carefully considered but are not accepted. Assessee follows mercantile system of accounting. Accordingly, on accrual basis, it should have offered the income for taxation. The CAG in their comments have also mentioned Non-recognition of interest income on accrual basis has resulted in understatement of profit by Rs.216.08 crores. Accordingly, to arrive at true picture of profit, the amount of Rs.216.08 crore is added back to total income.”

In an appeal, the CIT (Appeals) held as follows:

“(II) Although the assessee had not quantified the amount of interest receivable on deposits lying with the Pay & Accounts office on the ground that the rate of interest on such deposits was not decided at the time of submission of the return of the appellant, the CAG in its report had quantified the amount at Rs.165.33 crores on the basis of decision of the Government of West Bengal communicated vide letter dated 13-06-2001 and subsequently followed by letter dated 08-08-2001 and 27-03-2002.

(III) The year of taxability of the aforesaid amount.

1.3 As it is evident from the order of the assessing officer he has held that interest on amount of term loan for the month of March, 2002 amounting to Rs.51.75 crores and interest receivable amounting to Rs.164.33 cores on deposits lying with the Pay & Accounts office in the previous year relevant to the Assessment Year 2002-03 should have been offered for tax on accrual basis.”

The learned Tribunal, by its original order dated August 25, 2006, had affirmed the addition of a sum of Rs.164.33 crores without realising that the income did not accrue to the assessee as also without realising that the income could not have accrued to the assessee in the absence of any contract between the lender and the borrower as regards the rate of interest.

This mistake was pointed out by the assessee by an application under section 254(2) of the I.T. Act. The learned Tribunal this time realised its mistake and corrected its earlier order dated August 25, 2006 and deleted the addition of a sum of Rs.164.33 crores. It may be pointed out that the rate of interest was subsequently agreed upon and the income was shown at Rs.88.86 crores and was offered for taxation in the assessment year 2004-05

as will be evident from paragraph 3 of the impugned order itself which reads as follows:

“3. This apart, there is another mistake on page 3 of the order of the Tribunal as pointed out by the Ld. Sr. Counsel with regard to ground No.XII that the amount of interest has been mentioned as Rs.36,09,016/- instead of the correct amount of Rs.36,09,31,016/-. The Ld. D.R. to this contention had nothing to say in rebuttal. Accordingly, the said rectification is hereby allowed. As a result of the modified portion of the order, the interest amount will be treated as Rs.88.86 crores for the financial year 2001-02 which has been offered to tax by the applicant-assessee in the assessment year 2004-05.”

Mr. Gaffar was unable to show any basis to hold that the learned Tribunal exceed its jurisdiction. In the absence of any submission, we are unable to find that the learned Tribunal exceeded its jurisdiction in passing the order under challenge.

The question formulated at the time of admission of the appeal is answered as follows:

The learned Tribunal was not shown to have been unjustified in rectifying its mistake. We as such are unable to hold

that the learned Tribunal exceeded its jurisdiction under section 254(2) of the I.T. Act.

The appeal is, therefore, dismissed.

(GIRISH CHANDRA GUPTA, J.)

(ASHA ARORA, J.)

Sb/tk