

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1721 OF 2013

The Commissioner of Income Tax-I, Pune .. Appellant.
V/s.
Bramha Bazar Hotels Ltd. .. Respondent.

Mr. Suresh Kumar i/b. Mr. Vipul Bajpayee, for the Appellant.
Mr. Mihir Naniwadekar, for the Respondent.

**CORAM: M.S.SANKLECHA, &
G.S.KULKARNI, JJ.
DATE : 26th AUGUST, 2015.**

P.C:-

This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 28th September, 2012 passed by the Income Tax Appellate Tribunal (the Tribunal) for the Assessment Year 2006-07.

2 Although multiple questions have been raised on behalf of the Revenue, Mr. Suresh Kumar, learned Counsel appearing for the Revenue urges only the following question for our consideration:-

“ Whether on the facts and in the circumstances of the case and in law, the Tribunal did not err in holding the Commissioner's order u/s. 263 as bad-in-law without appreciating that the Assessing Officer had allowed the assessee's claim of deduction on account of premium paid on buy-back of shares by merely assuming the facts, without *applying his mind and without making enquiries which prudence warranted and, therefore, the Commissioner was justified in assuming jurisdiction u/s. 263?*”

3 During the Assessment Year 2006-07, Respondent-Assessee had debited a sum of Rs.3.45 Crores to its profit and loss account. This being expenditure incurred towards buy-back of shares. The Assessing Officer by his order dated 29th December, 2009 passed under Section 143(3) of the Act accepted the same while determining the taxable income.

4 Thereafter, on 31st March, 2011, the Commissioner of Income Tax in exercise of its powers under Section 263 of the Act passed an order in Revision, setting aside the Assessment Order dated 29th December, 2009 for the Assessment Year 2006-07. Further the inter alia, directed the Assessing Officer to add an amount of Rs.3.45 Crores to the taxable income of the Respondent as it is capital expenditure and cannot be allowed as deduction.

5 On further appeal, the Tribunal by the impugned order dated 28th September, 2012 recorded the fact that there was a dispute between two groups of share holders in the Respondent-Assessee Company from the year 2002-03 onwards. The dispute between the share holders was carried to the Company Law Board in proceedings for oppression and mismanagement. This dispute between the warring groups affected the business of the Respondent-Assessee, resulting in an arrangement being reached before the Company Law Board by which the Respondent-Assessee would buy-back shares of one of the group of share holders and cancel the same. This was done by the Respondent-Assessee to only ensure that its business can prosper. The extra amount paid over and above the face value of the shares to the departing group of share holders was debited as revenue expenditure. The Tribunal by the impugned order

held that the issue arising before it stands covered by its own decisions in **Echjay Industries Ltd v/s. DCIT 88 TTJ 1089** and in **Chemosyn Ltd. v/s. ACIT** rendered on 7th September, 2012.

Where on an identical facts, the Tribunal held that the amount paid by the Company to one of the warring group of share holders to buy-back and cancel the shares was in the nature of Revenue expenses. Therefore, the impugned order took a view that the decision taken by the Assessing Officer could not be said to be erroneous for the purpose of exercising powers of revision under Section 263 of the Act.

6 Mr. Suresh Kumar, learned Counsel appearing for the Revenue submits that the impugned order of the Tribunal in Echjay Industries (supra), was challenged before this Court. However, the same was dismissed not on merits but in view of the failure to remove office objections. In any case, it is his submission that in view of the decision of the Apex Court in **Brooke Bond India Ltd. v/s. CIT 225 ITR 798**, the issue in controversy is covered in in favour of the Revenue as it holds any expenditure incurred in respect of issue of share capital cannot be allowed as revenue expenditure. Therefore, he submits that the question be admitted for the purpose of consideration.

7 We find that the Commissioner of Income Tax while exercising the power of revision under Section 263 of the Act has specifically recorded that the facts situation in the case of Echjay Industries (supra) as well as in the present case are similar. Nevertheless he exercised his powers of revision as he was not clear whether the Revenue has accepted the order of the Tribunal in the case of Echjay Industries (supra). The memo of appeal also specifically states that the

facts situation in Echjay Industries (supra) and the present case are identical.

8 On the aforesaid facts, the Assessing Officer as well as the Tribunal were satisfied that the amount paid by the Respondent-Assessee to buy-back shares of one group of share holders was only for the purpose of ensuring that it can run its business smoothly and more profitably. This is essentially a finding of fact. It would be pertinent to point out that the impugned order of the Tribunal also relies upon its order in Chemosyn Ltd. (supra) rendered on 7th September, 2012 arising on an identical facts. The Revenue carried the above order dated 7th September, 2012 before this Court, being Income Tax Appeal No. 361 of 2013 (CIT v/s. M/s. Chemosyn Ltd.). This Court by order dated 11th February, 2015 dismissed the Revenue's appeal from an order dated 7th September, 2012 of the Tribunal. This Court by an order dated 11th February, 2015 dismissed the Revenue's appeal, holding that expenditure so incurred by the Respondent-Assessee for purchase of shares and subsequent cancellation thereof was only for the purpose of enabling smooth running of its business. It was further held that the aforesaid finding is essentially a finding of fact and the Revenue was not able to show that the finding is in any manner perverse and/or arbitrary. The above observation applies with equal force to the present facts.

9 The decision of the Apex Court in the case of Brooke Bond (supra) relied upon by the Revenue deals with the situation where the assessee therein issued shares to the general public with a view to increase its share capital. The expenditure incurred by Brooke Bond to increase its capital, was claimed to be Revenue in nature and, therefore,

deductable. The Apex Court upheld the order of the High Court and held that the amount spent to increase the share capital is not revenue but capital expenditure. Thus, it is to be disallowed. The aforesaid decision was rendered in a completely different fact situation from the one here. In this case, there is no increase of share capital but the Company has been forced to pay off one of the warring group of share holders by buying its shares for its own well-being and carrying on business. It was the expenditure which was forced upon the Respondent-Assessee so as to carry on its business and not an expenditure of choice. Therefore, the Supreme Court in Brooke Bond (supra) is inapplicable to the present facts.

10 In view of the above, it cannot be said that the order of the Assessing Officer is erroneous for the purpose of exercising of power under Section 263 of the Act. In any event, at the very highest, the issue would be a debatable issue and in these circumstances, the exercise of power by the Commissioner of Income Tax under Section 263 of the Act is not valid. Accordingly, we find no substantial question of law arises for our consideration.

11 **Appeal dismissed.** No order as to costs.

(G.S.KULKARNI,J.)

(M.S.SANKLECHA,J.)