

In the High Court of Judicature at Madras

Dated: 29.10.2014

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The Honourable **Mr.JUSTICE R.SUDHAKAR**  
and  
The Honourable **Mr.JUSTICE R.KARUPPIAH**

Tax Case (Appeal) Nos.763 and 764 of 2014  
& M.P.No.1 of 2014

M/s.TNK Govindaraju Chetty & Co. Pvt. Limited  
TNK House, 48, Anna Salai,  
Chennai - 600 002.

.... Appellant in both T.C.(A)s

Vs.

The Assistant Commissioner of Income Tax  
Media Circle - II  
Chennai - 600 034.

.... Respondent in both T.C.(A)s

APPEALS under Section 260A of the Income Tax Act against the order dated 23.9.2011 made in I.T.A.Nos.1049& 1109/Mds/2009 on the file of the Income Tax Appellate Tribunal 'B' Bench, Chennai.

For Appellant : Mr.R.Venkat Narayanan

For Respondent : Mr.M.Swaminathan  
Standing counsel for Income Tax

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**COMMON JUDGMENT**

(Delivered by R.SUDHAKAR,J.)

The above Tax Case (Appeals) are filed by the assessee as against the orders of the Income Tax Appellate Tribunal raising the following substantial questions of law:

"i) Whether on the facts and in the circumstances of

the case, the Income Tax Appellate Tribunal was right in law in disallowing the interest payment of Rs.7,08,742/- for the assessment year 2004 -05 and Rs.6,56,783/- for the assessment year 2005-06?

ii) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in disallowing the interest payment when the interest free advances given to sister concern is out of own funds and out of commercial expediency?

iii) In any event, whether on the facts and in the circumstances of the case, the Tribunal was right in law in disallowing the interest payment of Rs.6 lakhs which represents interest paid on Fixed Loan of Rs.50.00 lakhs received from M/s.T.N.K.Govindaraju chetty a firm in earlier years and which has no relation to subsequent interest free advances?"

2. The appellant/assessee is a private limited company engaged in the business of exhibition of cine films. The assessee, in the Profit and Loss Account, netted the interest payments against the interest income received and had admitted only the balance as income for the assessment years in question. It is seen from the order of the Assessing Officer that the assessee had given substantial non-interest bearing advances to related parties with outstanding balances due to the assessee. The Assessing Officer found that the total interest payment incurred by the assessee includes payment to an associated firm of the assessee. The Assessing Officer also found that the assessee was found to be diverting its funds to its associate concerns without charging any

interest, but on the other hand, was incurring substantial interest outlay by borrowing funds, which were less than own funds of the assessee company lying with associated concerns. The Assessing Officer observed that no evidence has been adduced by the assessee to prove that the said expenditure had to be necessarily incurred in the interests of the business and no explanation has been furnished as to how the said advances/loans to related parties, which were totally interest free, have benefitted the assessee company. Accordingly, the Assessing Officer, apart from other claims, disallowed the claim of interest paid by the assessee.

3. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who after relying upon various decisions, directed the Assessing Officer to delete the addition made, thereby allowed the claim made by the assessee.

4. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the Revenue preferred appeals before the Income Tax Appellate Tribunal. The Tribunal, agreed with the view of the Revenue, allowed the appeals filed by the Revenue holding that the advancement of non-interest bearing funds to related parties was not compelled by any commercial expediency and the assessee had not proved any commercial expediency.

5. Aggrieved by the order of the Income Tax Appellate Tribunal, the assessee is before this Court.

6. Heard learned counsel appearing for the assessee and the learned standing counsel appearing for the Revenue.

7. We have perused the order of the Tribunal and we find no merits in these appeals. As we find from the order of the Tribunal, in paragraph 13, the facts are very lucid and clear that the assessee had borrowed from a person by paying interest, but has given non-interest bearing advances to the same person and hence, there is no commercial expediency. For better clarity, the relevant portion of the order of the Tribunal reads as follows:

"13. We have considered the rival submissions. A perusal of the assessment order clearly shows that for the assessment year 2004-05 out of an interest payment of Rs.7,09,530/-, an amount of Rs.6,00,000/- has been paid to M/s.TNK Govindaraju Chetty. Further a perusal of the assessment order clearly shows that for the assessment year 2004-05 the non-interest bearing advance given to M/s.TNK Govindaraju Chetty is Rs.36,17,000/- and for the assessment year 2005-06 it increased to Rs.46,82,779/-. Thus what is noticed is that the assessee has borrowed from the same person by paying interest but has given non-interest bearing advances to the same person. Where is the commercial expediency? The assessee has been unable

to explain this transaction. Once this interest portion is removed, the interest payments to the banks are but minor. This clearly shows that the advancement of non-interest bearing funds to related parties is not compelled by any commercial expediency. The assessee has also not proved before us any commercial expediency in regard to any of the interest-free advances given to the related parties. The claim of the assessee that it had adequate non-interest bearing funds to give the interest-free advances is seen otherwise insofar as the non-interest bearing funds available with the assessee is in the form of profits of the year which obviously cannot be determined until the end of the year. Even assuming that these funds were available, it would have to be seen in line with the cash book of the assessee. Here it would be pertinent to note that the resolution to advance the amounts to one of the concerns, namely M/s.Glenrock Estates P. Ltd. to an extent of Rs.250 lakhs was held on 22.04.2002, i.e. at the beginning of the financial year whereas the profits could be determined only during the end of the financial year. In the circumstances, we are of the view that the finding of the learned CIT(A) on this issue is liable to be reversed and we do so. In the circumstances, the disallowance of interest as made by the Assessing Officer stands restored and the finding of the learned CIT(A) stands reversed on the issue."

8. It is evident from the findings of the Tribunal that there is no commercial expediency for the assessee to pay interest. Hence, we find no error in the order of the Tribunal. Accordingly, we find no question of

**R.SUDHAKAR,J.**  
**AND**  
**R.KARUPPIAH,J.**

law much less any substantial question of law arises for consideration in the above appeals.

9. In the result, both the Tax Case (Appeals) stand dismissed. No costs. Consequently, M.P.No.1 of 2014 is also dismissed.

Index :Yes/No  
Internet:Yes/No  
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(R.S.,J) (R.K.,J)  
29.10.2014

To

1. The Income Tax Appellate Tribunal 'B' Bench, Chennai.
2. The Commissioner of Income Tax (Appeals)-VI, Chennai.
3. The Joint Commissioner of Income-tax, Media Range, Chennai - 600 034.

T.C.(A) Nos.763 & 764 of 2014