

Court No. - 34

Case :- INCOME TAX REFERENCE No. - 14 of 2001

Applicant :- M/S Renu Sagar Power Col Ltd.Now M/S Hindalco Industries Ltd

Opposite Party :- C.I.T. Allahabad

Counsel for Applicant :- R.S. Agrawal, Gaurav Mahajan

Counsel for Opposite Party :- C.S.C.,S.Chopra, Shubham Agarwal

Hon'ble Sudhir Agarwal,J.

Hon'ble Kaushal Jayendra Thaker,J.

1. Heard Sri Vinod Upadhaya, Advocate, assisted by Sri R.S. Agarwal, Advocate, for the Assessee and Sri Shubham Agarwal for Revenue.

2. Income Tax Appellate Tribunal, Allahabad (hereinafter referred to as 'Tribunal') has preferred following two questions of law for our determination:-

“ (i) Whether on the facts and in the circumstances of the case and on a proper interpretation of agreements, letters and resolutions dated 13th May, 1987, 26th June 1987, 14th March 1989, 15th March 1989 and 17th March 1989, the Tribunal was justified in law in holding that interest on loans advanced to M/s Marigold Holdings and Trading Company Ltd, and M/s Shivtrishul Finance Limited (now known as Dakshinanchal Finance Limited) by the assessee Company (Formely Renusagar Power Company Limited) accrued from day to day and did not accrue at the end of the accounting year?

(ii) Whether on the facts and in the circumstances of the case and despite that fact that before the close of the relevant accounting year, the Board of the assessee company had passed a resolution on 17.3.1989 to reduce the rate of interest with effect from 1.1.1988 from 12% to 6%, the Appellate Tribunal was justified in holding that the rate will stand reduced only from 17.3.1989?”

3. The Assessee M/s Renu Sagar Power Col Ltd. is a subsidiary Company of M/s Hindalco Industries Limited. There are two other

subsidiary Companies of M/s Hindalco Industries Limited, i.e. M/s Marigold Holdings and Trading Ltd and M/s Dakshinanchal Finance Ltd. In the year 1987 Assessee out of its own fund, advanced loan of Rs. 4.5 Crores to each Sister Subsidiary Companies i.e. with M/s Marigold Holdings and Trading Ltd and M/s Dakshinanchal Finance Ltd, on interest at the rate of 12 percent per annum. Companies on 14.03.1989 wrote letters to Assessee requesting it to reduce rate of interest from 12 percent per annum to 6 percent per annum for the reasons stated in the letters.

4. A resolution was passed by Board of Directors on 17.03.1989 accepting request and to reduce interest rate on outstanding loans of two Sister Subsidiary Companies from 12 percent to 6 percent per annum w.e.f. 01.01.1988.

5. In the accounts of Assessee Company therefore, it disclosed interest on lower rate for the period 01.01.1988 to 31.03.1989 i.e. in the Assessment Year 1989-90, at the rate of 6 percent per annum. Assessing Officer did not accept this reduction holding that interest accrued on monthly basis and also that Board of Directors of Assessee have no power to waive accrued income retrospectively and the reduction could at the best be on a prospective basis. It assessed interest accrued for the period 01.01.1988 to 28.02.1989 at the rate of 12 percent per annum resulting in addition of Rs. 58,50,000/- in the income.

6. In appeal preferred by Assessee, Commissioner of Income Tax (Appeals) [hereinafter referred to as 'CIT(A)'] felt that arrangement was a device to reduce tax liability and hence issued notice under Section 251(2) of Income Tax Act, 1961 (hereinafter referred to as 'Act 1961') requiring Assessee to show cause why interest income for the month of March 1989 be also not taken at 12 percent.

7. The CIT(A) not only upheld order of Assessing Officer but held that Assessee is liable for addition on account of interest at the rate of 12 percent for March 1989 also. It resulted in a further

enhancement of Rs. 9 Lacs.

8. Assessee preferred appeal before Tribunal which held that in the account books, interest was charged on daily basis or in broken periods and not on yearly basis and therefore, it should be taken as chargeable on monthly basis. It could not have been reduced before the date, Board of Directors of Assessee passed resolution on 17.03.1989. It held that thus interest could not have been reduced upto 16.03.1989 and reduction will apply only thereafter.

8. Letters dated 13.05.1987 whereby loan was sanctioned by Assessee to Sister Subsidiary Companies shows that the rate of interest on loan amount was mentioned as 12 percent per annum and it was repayable in five equal installments beginning from the end of 7th year. When rate of interest shown was on annual basis, we find it difficult to accept as to how it can accrue on daily or monthly basis. In this regard we required learned counsel appearing for Revenue to show any provision or authority which may justify an inference that interest shall be deemed to have accrued on daily or monthly basis. It is true that liability of interest will go on increase with the passage of time every day, but for the purpose of accounting, interest rate is on annual basis and not daily or monthly basis. If it is shown to have accrued on monthly basis to the net interest per annum would become much more than 12 percent since it will take a nature of compound interest, accruing every month. There is no reason to add such burden when parties have agreed on simple interest at 12 percent per annum. So long as the interest has not accrued, rate thereof could be reduced and this proposition is not disputed.

9. In the present case 12 percent interest could have accrued at the end of Assessment Year and since it was reduced before end of Assessment Year, in our view Assessee was entitled to have charged reduced rate of interest in the assessment year in which decision to reduce interest was taken.

10. In **Commissioner of Income Tax, Amritsar Vs Shiv Prakash Raj and Company Pvt. Ltd. and others 1996 (11) SCC 530**, Court held that an interest already accrued cannot be waived after its accrual by passing a resolution retrospectively. Court relied on its earlier decision in **Commissioner of Income Tax Vs Chamanlal Mangaldas & Co., 1960 391 ITR (8) SC** and held that income tax levied on income. Two points of time are taken into account to attract tax liability i.e. accrual of income or its receipt. Substance of the matter is income. If income does not result at all there cannot be any tax. The entries in account etc. are irrelevant but factum is whether income has accrued or has been received or not. If, it has accrued, it will be taxable.

11. In the present case, interest agreed between parties on 12 percent per annum meaning thereby its point of time of accrual is the year and not days, weeks or months.

12. Tribunal has read the judgment in **Commissioner of Income Tax, Amritsar Vs Shiv Prakash Raj and Company Pvt. Ltd. and others (supra)** incorrectly and misapplied the same, by misunderstanding true dictum laid down therein.

13. In view of above, we answer question 1, holding that Tribunal was not justified in holding that interest accrued from day to day basis and not at the end of year. Similarly question 2 is answered holding that Tribunal was not justified in holding that interest rate shall stand reduced only from 17.03.1989.

14. We answer the reference in favour of Assessee and against Revenue.

15. Reference is answered accordingly and stands disposed of.

Order Date :- 9.8.2016

Pravin