

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 893 of 2006

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE M.R. SHAH

Sd/-

and

HONOURABLE MR.JUSTICE B.N. KARIA

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

STEELCO GUJARAT LTD.....Appellant(s)

Versus

INCOME TAX OFFICER....Opponent(s)

Appearance:

MR. B.S. SOPARKAR, LD. ADV FOR MRS SWATI SOPARKAR, ADVOCATE for the Appellant(s) No. 1

MR NITIN K MEHTA, ADVOCATE for the Opponent(s) No. 1

CORAM: HONOURABLE MR.JUSTICE M.R. SHAH

and

HONOURABLE MR.JUSTICE B.N. KARIA

Date : 10/11/2016

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE M.R. SHAH)

1.0. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Income Tax Appellate Tribunal, Ahmedabad Bench "C" passed in ITA No. 2020/AHD/1999 dated 23.12.2005 for AY 1992-93, by which, the learned Tribunal has allowed the said appeal preferred by the Revenue and has held that interest income earned on the amount

of deposit kept with the Bank for the purpose of opening of Letter of Credit (LC) used for the purchase of plant and machinery would be taxable as “income from other sources” and the same shall not go to reduce the preoperative expenses or fixed assets of the assessee, the assessee has preferred present Tax Appeal to consider following substantial question of law:

“Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that interest income earned on the amount of deposit kept with the bank for the purpose of opening Letter of Credit (LC) used for the purchase of plant and machinery would be taxable as “income from other source” and the same shall not go to reduce the preoperative expenses or the fixed assets of the appellant ?”

2.0. The facts leading to the present appeal in nutshell are as under:

2.1. That the assessee company has opened foreign currency account with State Bank of India, Tokyo with the approval of Reserve Bank, in which, the contribution from NRI promoters were credited. The said payments were made for import of major plant and machinery purchased from Japan. The company opened LC for import of plant and machinery from time to time. The lien was created for the equivalent amount of LC deposited in this account. The assessee company earned interest on the said deposit in foreign currency which was converted into rupees, either at the time of settlement of import transactions or on the date of balance sheet, whichever is earlier. The assessee earned interest of Rs. 25,17,666/- on the aforesaid fixed deposited which was placed for opening of LC for import of plant and machinery. The assessee claimed that such interest earned was not at all taxable. As according to the

assessee, the same cannot be included as income from other source. Alternatively, a request was made that interest paid on the borrowing utilized for the purpose of investment as FDR should be allowed as deduction. The AO did not accept the contention of the assessee and made addition of Rs. 25,17,666/- being interest on the bank deposit which was required to purchase of LC.

The CIT(A) deleting the aforesaid addition.

2.2. Feeling aggrieved and dissatisfied with the order passed by the learned CIT(A) deleting the aforesaid addition, Revenue preferred appeal before the learned Tribunal. Before the learned Tribunal a direct decision of Hon'ble Supreme Court in the case of Commissioner of Income Tax vs. Karnal Cooperative Sugar Mills Ltd reported in (2000) 243 ITR 2(SC) was pointed out. However, considering the decision of the Hon'ble Supreme Court in the case of Commissioner of Income Tax vs. Autokast Ltd reported in (2001) 241 ITR 110 (SC) by impugned judgment and order the learned Tribunal has held that decision of the Hon'ble Supreme Court in the case of Autokast Ltd shall be applicable as it is three Judge Bench Judgement and the decision of the Hon'ble Supreme Court in the case of Karnal Cooperative Sugar Mills Ltd(supra) is by two Judge Bench judgment. Consequently, relying upon the decision of the Hon'ble Supreme Court in the case of Autokast Ltd (supra) the learned Tribunal allowed the appeal preferred by the Revenue and set aside the order passed by the learned CIT(A) and confirmed the addition made by the AO.

2.3. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Tribunal, the assessee has preferred present appeal to consider the aforesaid substantial question of law.

3.0. We have heard Shir B.S. Soparkar, learned advocate for the appellant- assessee and Shri Nitin Mehta, learned counsel for the Revenue. We have considered and gone through the decision of the Hon'ble Supreme Court in the case of Autokast Ltd (supra) and also in the case of Karnal Cooperative Sugar Mills Ltd (supra).

4.0. At the outset, it is required to be noted and even as observed by the AO while passing the assessment order, the assessee earned the interest on the deposit which was required to be placed for opening of LC for import of plant and machinery. The AO has also observed that without depositing the money with FDR, the LC cannot be opened. However AO did not accept the contention made on behalf of the Assessee that addition of aforesaid investment treating as income from other source, solely on the ground that the assessee cannot pray for set off of the interest and other income of the preoperative project expenses. In light of the aforesaid facts, more particularly, when the interest earned by the assessee was on the fixed deposit which was required for obtaining LC for purchase of plant and machinery, we are of the opinion that the decision of the Hon'ble Supreme Court in the case of Karnal Cooperative Sugar Mills Ltd (supra) shall be directly applicable to the facts of the case on hand. In the case of Karnal Cooperative Sugar Mills Ltd (supra) also assessee earned the

interest on deposit made to open the Letter of Credit for purchase of machinery required for setting up of its plant. The Hon'ble Supreme Court has held that such interest was a capital receipt which would go capital shifted, which would go to reduce cost of asset and that deposit of money was directly linked with purchase of plant and machinery and therefore, any income earned on such deposit is incidental to the acquisition of the assets for setting up of plant and machinery. Under the circumstances, we are of the opinion that decision of the Hon'ble Supreme Court in the case of Karnal Cooperative Sugar Mills Ltd (supra) shall be squarely applicable to the facts of the case on hand.

5.0. However, so far as reliance placed upon the decision of the Hon'ble Supreme Court in the case of Autokast Ltd (supra) upon which, reliance has been placed by the learned Tribunal as well as by the revenue is concerned, we are of the opinion that said decision shall not be applicable to the facts of the case on hand. In the case before the Hon'ble Supreme Court, the assessee borrowed the certain amount from the IDBI and deposited the same in the banks till it was used either in purchase of plant and machinery and / or installing them or in running establishment. To that Hon'ble Supreme Court has observed that AO was right in treating such interest as income of the assessee from the other source.

6.0. In view of the above and for the reasons stated above and in light of the direct decision of the Hon'ble Supreme Court in the case of Karnal Cooperative Sugar Mills Ltd (supra), we are of the opinion that the learned Tribunal has committed error in

holding that the interest income earned on the amount of deposit kept with the bank for the purpose of opening letter of credit used for the purpose of plant and machinery would be taxable as “income from other source”. The question of law is answered in favour of the assessee and against the revenue. Present appeal stands disposed of.

Sd/-
(M.R. SHAH, J.)

Sd/-
(B.N. KARIA, J.)

Kaushik

