

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
Original Side

Present :- Hon'ble Mr. Justice I. P. Mukerji
Hon'ble Mr. Justice Md. Nizamuddin

ITA 207 of 2008

Commissioner of Income Tax, Kolkata II

VS.

M/s. Kesoram Industries Ltd.

For the Appellant :- Mr. Siddhartha Lahiri, Adv.

For the Respondent :- Mr. J.P. Khaitan, Sr. Adv.
Mrs. Nilanjana Banerjee, Adv.

Judgment On :- 18.04.2019

MD. NIZAMUDDIN, J.:-

Heard the learned counsel for the parties. This appeal of the revenue arises out of the impugned order of the Income Tax Appellate Tribunal dated 23rd November, 2007 relating to assessment year 2003-04. On the following substantial questions of law this appeal was admitted by this Court on 5th August, 2008.

“ i. Whether on the facts and in the circumstances of the case the Learned Tribunal erred in law in deleting the disallowance of Rs. 1,30,68,000/- being the premium paid on prepayment of loan by the assessee?

ii. Whether on the facts and in the circumstances of the case the Learned Tribunal erred in law in deleting the disallowance of Rs. 1,60,50,000/- being the front end fees or processing fees for obtaining loan?.”

So far as question No. 2 is concerned it is similar to the case of the assessee in ITA No. 496 of 2008 relating to assessment year 2004-05 which we have already decided by holding in favour of assessee and against the revenue by giving detailed reasons. Accordingly this question is answered in negative and in favour of assessee and against the revenue.

Now we deal with the first question.

Grievance of the revenue against the Tribunal is against deletion of disallowance of the premium paid by the assessee on pre payment of loan by contending that the said expenditure is not allowable since it is capital in nature and the same should not be treated as revenue expenditure. On perusal of the impugned order of the learned Tribunal it appears that in assessment year 2001-02 assessing officer himself has allowed deduction on payment of such premium as revenue expenditure and in assessment year 2002-03 assessing office has disallowed the same by treating the payment of such premium as capital expenditure while the CIT (appeals) has deleted the said addition and the learned Tribunal has upheld the order of CIT (appeals) deleting such addition.

Following its earlier order in assessment year 2002-03 learned Tribunal has dismissed the appeal of the revenue by directing for deletion of such addition. Hence this appeal by the revenue

In our view the learned Tribunal is justified in allowing the aforesaid claim of deduction on payment of premium of pre payment of the loan to reduce its interest burden in view of falling interest rate.

In our view the aforesaid expenditure incurred by the assessee by way of premium paid on pre payment of loan for reducing interest the liability cannot be called acquisition of any asset and cannot be treated as capital expenditure and it has to be allowed as revenue expenditure. For the aforesaid reason this appeal is dismissed and accordingly question no. 1 is answered in negative and in favour of assessee and against the revenue.

Certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I agree,

(I. P. MUKERJI, J.)

(Md. Nizamuddin, J.)