

Commissioner Of Income Tax vs Gujarat Guardian Limited on 14 January, 2020

Bench: A.M. Khanwilkar, Dinesh Maheshwari

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7615 OF 2009

COMMISSIONER OF INCOME TAX

Appella

VERSUS

GUJARAT GUARDIAN LIMITED

Respond

WITH

CIVIL APPEAL NO. 2414 OF 2010

O R D E R

Heard learned counsel for the parties. These appeals were admitted only in reference to question of law formulated as follows: -

“Whether on the facts and in the circumstances of the case, the Hon’ble High Court of Delhi was right in law in allowing deduction of lump sum pre-payment premium paid by the assessee to IDBI amounting to Rs. 8 crores, ignoring the fact that the aforesaid payment represented upfront [present value] of differential rate of interest that would have been on the loan if no restructuring of the debt had taken place; and that the judgment of Supreme Court in 225 ITR 802 is squarely applicable to the present case?” The assessing officer and the First Appellate Authority answered the issue against the assessee but the ITAT and the High Court has held that the principle underlying the exposition in Madras Industrial Investment Corporation Ltd. Vs. C.I.T.- 225 ITR 802 has no application to the fact situation of the present case, in view of the dictum in paragraphs 15 and 16 of the reported decision itself.

The ITAT in its judgment had observed as follows:

“31. We have heard the rival submissions. The assessee had made proposal to Industrial Development Bank of India (IDBI) for restructuring of debt IDBI vide letter dated 19th March 1995 agreed to, inter alia, reduce the rate of interest on rupee loan to 15% per annum, effective from 1st April, 1995 upon payment of lump sum

prepayment premium of Rs. 8 crores. The Assessing Officer has allowed deduction for Rs. 80 lacs being 1/10th of the prepayment premium of Rs. 8 crores during the year, applying the ratio of the Supreme Court decision in the case of Madras Industrial Corporation Vs. CIT, 225 ITR

802. The prepayment premium paid by the assessee to EDBI is in lieu of IDBI agreeing to reduce the rate of interest on the rupee loan aggregating to Rs 170.76 crores. The same, in other words, represents upfront payment (present value) of differential rate of interest that would have been due on the loan if no restructuring of the debt had taken place. In terms of S. 36(1)(ii) read with S. 2(28A) of the Act prepayment charges being interest paid on moneys borrowed for purposes of business, is to be allowed deduction as revenue expenditure. The prepayment premium being revenue expenditure, is to be allowed deduction in the year of accrual thereof, since the Act does not recognize the concept of deferred revenue expenditure.

32. The decision of the Chennai Bench of the Tribunal in the case of Overseas Ltd. Vs. JCIT 86 ITD 602 Chennai also supports the plea of the assessee. Besides the above S. 43B(d) also permits claiming deduction on actual payment.

Even on this basis the claim of the assessee deserves to be accepted. Ground No.3 is accordingly allowed.” (emphasis supplied in italics) The view so taken by the ITAT commended to the High Court. We find no reason to take a different view in the matter.

In view of the above, these appeals deserve to be dismissed and are dismissed accordingly. No order as to costs.

Pending applications, if any, stand disposed of.

.....J (A.M. KHANWILKAR)J (DINESH MAHESHWARI) New Delhi
January 14, 2020 ITEM NO.102 COURT NO.7 SECTION XIV-A S U P R E M E C O U R T O F I N D
I A RECORD OF PROCEEDINGS Civil Appeal No(s). 7615/2009 COMMISSIONER OF INCOME
TAX Appellant(s) VERSUS GUJARAT GUARDIAN LIMITED Respondent(s) ([AT TOP]) WITH
C.A. No. 2414/2010 (XIV-A) Date : 14-01-2020 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR HON'BLE MR. JUSTICE DINESH
MAHESHWARI For Appellant(s) Ms. Praveena Gutam, Adv.

Mrs. Anil Katiyar, AOR Mr. M.D. Akhil, Adv.

For Respondent(s) Mr. Ajay Vohra, Sr. Adv.

Ms. Kavita Jha, AOR Mr. Vaibhav Kulkarni, Adv.

Mr. Udit Naresh, Adv.

UPON hearing the counsel the Court made the following O R D E R The appeals are dismissed in terms of the signed order.

Pending applications, if any, stand disposed of.

(DEEPAK SINGH)
COURT MASTER (SH)

(VIDYA NEGI)
COURT MASTER (NSH)

[Signed order is placed on the file]