

Delhi High Court

Commissioner Of Income Tax vs Motor General Finance Ltd. on 28 September, 2004

Equivalent citations: (2005) 193 CTR Del 258, 2005 272 ITR 550 Delhi

Author: B Patel

Bench: B Patel, B D Ahmed

JUDGMENT B.C. Patel, C.J.

1. On remand made by the Supreme Court in Civil Appeal No. 1479 of 2004 in the case of Motor General Finance Ltd. v. CIT decided on 25th Feb., 2004 : appeal is listed before us for hearing.

2. From the order of the Tribunal, it transpires that there was a specific ground with regard to the disallowance of Rs. 10 lakhs in respect of fresh advances made in the year in question to the sister-concern by the appellant, In all, the loan granted to the sister-concern extended to the tune of Rs. 47,67,740.

3. The AO was of the view that the basic information was not provided so as to arrive at a conclusion of the nexus between the advances and the assessed's overdraft and, therefore, adverse inference had to be drawn to the effect that the assessed had utilised interest-bearing loans to make the advances to the sister-concern and ultimately, considering this aspect, came to the conclusion that interest liability charged to the P&L a/c or to the like after taking a sum of Rs. 10 lakhs pertaining to this advance.

4. It appears that before the Tribunal, some material was placed on record which has been examined and this is clear from a reading of paras 7 and 8 of the order made by the Tribunal. It was submitted before the Tribunal that in this way, loan of Rs. 47,67,740 to the sister-concern was entirely out of the profit of the year. No disallowance of interest was warranted. The Tribunal, thereafter, examined the matter and, after going through the relevant record, held that the issue is covered by the decision of the Tribunal in the case of ITA No. 804/Del/1986, which vacated the addition after considering the case laws on the points and also in view of the Supreme Court decision in the case of East India Pharmaceutical Works Ltd. v. CIT vacated the disallowance, as submitted before the AO. It is against this order that the appeal has been preferred before this Court.

5. In view of this, the Court answered the question in negative, i.e., in favor of the Revenue and against the assessed. It is against this order that the assessed preferred an appeal before the Supreme Court which was disposed of on 25th Feb., 2004. The Supreme Court held as under:

"We have seen from the file that, as contended by the learned counsel, certain statements were produced before the authorities, notice of which has not been taken by the High Court. The contents of these statements would have vital importance on the ultimate decision that the High Court may have to take. Therefore, we think it appropriate that since the High Court has proceeded on an erroneous factual basis, this matter should be remanded back to the High Court to consider the material produced by the appellant which is found at pp. 70-74 of the appeal papers and decide the case on that basis.

In view of the above, we allow this appeal, set aside the impugned order of the High Court and remit the matter back to the High Court for fresh disposal."

6. In view of the aforesaid order, we are hearing this appeal and we have to examine pp. 70-74 of the appeal papers. Reading pp. 70-74 and the decision of the Tribunal, particularly, para 8 thereof, it appears that the Tribunal has examined the decision at a macro level and not in the manner in which the Tribunal ought to have examined the matter in view of the evidence which was placed before it. It may be that the assessed may not have utilised the loan amount for the benefit of the sister-concern or may have utilised the said amount. For that purpose, it was for the Tribunal to consider the same or the Tribunal ought to have given a direction to the AO and thereafter, examined the matter and record a finding in this behalf.

7. Prima facie, it appears to us that, as indicated at p. 72, for certain number of days, the amount was paid from the borrowed funds to the sister-concern. The amount was advanced to the sister-concern. However, that is required to be examined by the AO as to what extent the benefit of borrowed funds was granted by way of allowing the advance to the sister-concern. It is on that amount that the interest is to be calculated and disallowed. The AO will have to calculate the exact days for which the amount was utilised out of the borrowed funds. We could have remanded the matter to the Tribunal for doing the exercise but in view of the fair statement made by the learned counsel that let it be remanded to the AO so as to enable him to calculate the exact number of days for use of the borrowed funds, we remand it to the AO. It goes without saying that pp. 70-74 (file before the Supreme Court) will have to be examined by the AO for arriving at a correct conclusion.

8. The matter is remanded to the AO for the aforesaid exercise and it is after this exercise, the AO will make an appropriate order as to what extent the interest is to be disallowed. The appeal is disposed of.