L.K. TRUST — Civil Appeal No. 527/2012

Complete public court-copy transcription. Clean reference PDF generated by Finin2min; not an original court facsimile.

Public source: https://indiankanoon.org/doc/170480250/

1 REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION Civil Appeal No.527/2012 L.K. TRUST Appellant(s) VERSUS COMMISSIONER OF INCOME TAX & ANR. Respondent(s) O R D E R

1. This appeal is at the instance of the assessee and is directed against the Judgment and Order passed by the High Court of Karnataka dated 1-3-2010 in Income Tax Appeal No. 175 of 2001 by which the appeal preferred by the Revenue against the Order passed by the Income Tax Appellate Tribunal came to be allowed.

2. The short point that falls for our consideration is whether the appellant - assessee is entitled to a deduction of Rs.21,74,234/- (Rupees Twenty One Lakh, Seventy Four Thousand, Two Hundred and Thirty Four only) being the interest paid by it in respect of the loan availed from the Corporation Bank under of the Income Tax Act 1961 (for short, “the Act 1961”).

3. It appears from the materials on record that the assessee borrowed a sum of Rs.3,80,00,000/- (Rupees Three Crore and Eighty Lakh only) from the Corporation Bank to purchase shares of Shaw Wallace and Company Limited in pursuance of an Agreement dated 2 19-11-1987. Under the said Agreement, the Company had committed to sell 7.80 lakh shares for a total consideration of Rs.3,80,00,000/-.

4. The assessee filed its return of income for the year 1989-90 declaring total income of Rs.7,55,67,530/- (Rupees Seven Crore, Fifty Five Lakh, Sixty Seven Thousand Five Hundred and Thirty only). The return was processed under of the Act and later Notice was issued under . While passing the Assessment Order way back in 1992, the Assessing Officer noted that the assessee had availed a loan of rupees Rs.3,80,00,000/- from the Corporation Bank and had paid interest of Rs.21,74,234/-. However, the AO further noted that the amount had been transferred to M/s Gayatri Holdings Private Limited, a group company, through purchase of its shares, who in turn transferred the amount to one Shri G Venkateshwaran for the purchase of shares of M/s Shaw Wallace and Company Limited. > 14. The first condition, namely, the assessee must have borrowed the monies, is fully satisfied in the instant case. The second condition is also satisfied in our view on the basis of detailed discussion in the foregoing paragraphs, wherein it has been concluded that the money has been raised and utilized for the purposes which are integral to the business of the appellant. Thirdly, the assessee has paid the entire interest of Rs.21,74,234/- to the bank on the borrowings made by it and has claimed the said amount as deduction by way of charge to P&L A/c.

15. Before we conclude on this, we may mention that it is observed that the appellant has more than one source of income under the head 'business' as it is deriving income from businesses of money- lending, speculation business, film distribution and also investment in shares. It is an admitted fact that the appellant- trust has maintained only one common set of books of account in which are incorporated entries pertaining to these business of film distribution, money lending, investments, speculation etc. The management of the entire set of operations is vested in the trustees as can -be observed from the trust deed discussed earlier and there is complete interlocking of funds. To emphasize, it is our view that the business of the appellant is also a composite one in as much as it carries on several businesses including the business of investment in shares through its subsidiaries.

16. The Hon'ble Supreme Court of India in the case of (1999) 236 ITR 4 71 has opined that as long as the assets purchased from borrowings have been treated as business assets the interest outgo on such borrowings is allowable. Also, the Apex Court in Vecumsees (supra) has taken the view that so long as the loans have been obtained for the purposes of business the fact that he particular part of the business for which the loans have been obtained were closed or 4 transferred subsequently did not alter the fact that the loans had, when raised, been for the purpose of assessee's business; and, that the interest paid on such loan cannot be denied as the management is common though the line or branch of business for which loan was raised is closed down. Gayathri Holding Private Limited who in turn advanced this amount to G.Venkateswaran to purchase shares on his behalf and on behalf of M/s. Sujatha Films Limited, Sujatha Productions Private Limited, Aruna International Private Limited and Sujatha Estate (Private) Limited, from Shaw Wallace and Company Limited is nothing but a colourable devise adopted to seek benefit of interest allowance under of the Income Tax Act?

9. The High Court answered the two questions of law, referred to above, in favour of the Revenue holding as under:- > “That the appellant Trust has borrowed a loan from the Bank in order to invest the same in its share business. It is also not in dispute that a sum of Rs.3,80,00,000/- has been transferred to M/s. Gayathri Holdings Private Limited by the assessee. It is also not in dispute that the assessee has paid the interest payable to the Bank on the entire borrowings. It is also not in dispute that out of Rs.3,80,00,000/- transferred to M/s. Gayathri Holdings Private Limited, certain amounts of shares of Shaw Wallace and Company are also transferred to the name of the assessee. Therefore, we are of the view that the Assessing Officer was justified in granting the relief to the assessee in respect of the value of the shares purchased by it through M/s. Gayathri Holdings Private Limited in respect of shares of Shaw Wallace and Company Limited. We are also of the view that the Assessing Officer is justified in disallowing the interest paid by the assessee to the Bank in respect of the amount which was lying with M/s. Gayathri Holdings Private Limited in the account of the assessee.”

10. In such circumstances referred to above, the assessee is here before us with the present appeal. ANALYSIS

11. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned order? 6

12. reads as follows: > “36(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in –(i) and (ii) ****** > (iii) the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession :- > Provided that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset for extension of existing business or profession (whether capitalized in the books of account or not); for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction. > Explanation. – Recurring subscriptions paid periodically by shareholders, or subscribers in Mutual Benefit Societies which fulfill such conditions as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause.”

13. The sub section has three important words or phrases, i.e., (i) Interest, (ii) Borrowed and, (iii) For the purpose of business or profession.

14. The definition of “interest” in means “interest payable in any manner in respect of any moneys borrowed or debt incurred”. But for , “interest” is restricted to that on money borrowed and not on debt incurred. In other words, the essence of interest is that it is a payment which becomes due because the creditor has not had his money at his disposal. It may be regarded either as representing the profit he might have made if he had had the use of his money, or conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation.

15. The provisions of concern capital borrowed and not other debts or liability. A loan of money undoubtedly 7 results in a debt, but every debt does not involve a loan. Liability to pay a debt may arise from diverse sources and a loan is one of such sources. The legislature has, under this clause, permitted as an allowance interest paid on capital borrowed for the purposes of the business; and the capital, in this context, means money and not any other asset purchased on credit [, 56 ITR 52 (SC)].

16. The expression “for the purpose of business” occurs in and also in . A similar expression with different wording also occurs in which reads as “for the purpose of making or earning income”. This issue came up for consideration before this Court in the case of reported in (SC) 118 ITR 200.

18. We are afraid that the High Court fell in error in taking the aforesaid view. (iii) thereof. After referring to its earlier decision in reported in 288 ITR(1), it has been opined that the court should examine the transfer of borrowed funds from the point of view of commercial expediency and not from the point of view whether the amount was advanced for earning profits.

21. In the facts of that case, it was held that the assessee was entitled to claim allowance of interest on the borrowed funds invested in a sister concern for acquiring controlling interest.

22. We are in complete agreement with the line of reasoning assigned by the ITAT insofar as the interpretation of L139: (iii) of the Act 1961 is concerned.

23. In the result, this Appeal succeeds and is hereby allowed.

24. The impugned Judgment and Order passed by the High Court is set aside.

25. It is declared that the assessee is entitled to seek deduction of the amount of the interest paid in respect of the capital borrowed to the tune of Rs.3,80,00,000/- for the purposes of the business. 9

26. Pending applications, if any, also stand disposed of. …………………………………………J (J.B. PARDIWALA) …………………………………………J (UJJAL BHUYAN) NEW DELHI; 7TH MAY, 2026.