

IT : Where assessee had taken bank overdraft for working capital requirement and it was not case of revenue that inventories were acquired out of borrowings, disallowance of interest on such borrowings on ground that such interest was included in closing work in progress, was not justified

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[2018] 93 taxmann.com 484 (Bombay)

HIGH COURT OF BOMBAY

Principal Commissioner of Income-tax, Panaji

v.

Milroc Good Earth Property & Developers LLP.*

N.M. JAMDAR AND PRITHVIRAJ K. CHAVAN, JJ.

TAX APPEAL NO. 109 OF 2017

FEBRUARY 28, 2018

Section [36\(1\)\(iii\)](#), read with section [145](#) of the Income-tax Act, 1961 - Interest on borrowed capital - Assessment year 2012-13 - Assessee was in business of development and construction of residential buildings - Assessing Officer disallowed interest paid by assessee on bank overdraft on ground that said amount was included in closing work in progress - On appeal, Commissioner (Appeals) as well as Tribunal deleted addition concluding that bank overdraft was taken for purpose of working requirement and was not utilized for construction work alone, but also for other expenses; that no inventories were acquired out of borrowings; and that valuation of stock and work in progress was done as per Accounting Standards - Whether since questions involved in instant case were pure questions of facts and both appellate authorities had recorded concurrent finding of fact, order of Tribunal could not be interfered with in appeal - Held, yes [Paras 7 and 8] [In favour of assessee]

CASES REFERRED TO

CIT v. British Paints India Ltd. [1992] Supp 1 SCC 55 (para 8) and *J.K. Industries Ltd. v. Union of India* [[2007](#)] [165 Taxman 323](#)/[2008](#)] [297 ITR 176 \(SC\)](#) (para 8).

Ms. Susan Linhares, Jr. Central Govt. Standing Counsel *for the Appellant.* **A. Kulkarni** and **Ms. Tanvi Kamat Ghanekar**, Adv. *for the Respondent.*

JUDGMENT

1. By this appeal, the Revenue, through the Principal Commissioner of Income Tax, has challenged the order passed by the Income Tax Appellate Tribunal, Panaji, dated 22 November 2016.
2. The Respondent-Assessee is in business of development and construction of residential buildings. In the year 2013, the Respondent-Assessee filed return of income for the year 2012-13, declaring a total income of Rs. 7748250/-. The case was selected for scrutiny by the Assessing Officer and a notice was issued on 6 August 2013 under Section 143(2) of the Income Tax Act. Another notice was given in view of the change of the Assessing Officer. The assessment under Section 143(3) was finalised, determining the total income at Rs. 24027928/-, after making addition of Rs. 15927795/-since interest expenditure

was included in closing of work in progress and addition of Rs. 351883/- was made in respect of sponsorship expenses to the returned income. The Assessing Officer, accordingly, passed an order on 27 March 2015.

3. The Respondent-Assessee filed an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax, on the question of disallowance of Interest paid on loans of Rs. 15927795/- after considering the material on record, concluded that the bank overdraft was taken for the purpose of working requirement and was not utilized for construction work alone, but also for other expenses such as advertisements and publicity, business promotion, brokerage, commission (sales), etc. The Commissioner also observed that the valuation of stock and work in progress was done as per the Accounting Standards issued by the Institute of Chartered Accountants of India. The Commissioner accordingly allowed the appeal of the Respondent-Assessee by order dated 19 May 2016 and confirmed the disallowance to the extent of Rs. 50000/-.

4. The Revenue filed an appeal before the Income Tax Appellate Tribunal (ITAT), Panaji and the Tribunal dismissed the appeal by an order dated 22 November 2016 and confirmed the findings of the Commissioner (Appeals).

5. We have heard Ms. Susan Linhares, learned Standing Counsel for the Revenue and Mr. A. Kulkarni, learned Counsel for the Respondent.

6. Ms. Linhares, the learned Standing Counsel for the Appellant urged that the appeal involves the question of law, namely whether the Tribunal has ignored the fact that the Assessee has taken loan for development and construction of residential buildings and the findings that the loan was taken for working capital requirement cannot be directly attributed to the work in progress, is incorrect. Mr. Kulkarni, the learned Counsel for the Respondent-Assessee submitted that the question raised is a question of fact and no question of law arises.

7. We have gone through the orders passed by the Assessing Officer, the Commissioner (Appeals) and the Tribunal. The Tribunal and the Commissioner (Appeals) had, after considering the material before them, found that no additions were made in the work in progress, which fact was not controverted by the Departmental Representative and rather it was conceded by the Departmental Representative. The Tribunal observed that the Revenue did not controvert the contention of the Respondent-Assessee that the amount was advanced keeping in view the commercial expediency. The Tribunal also observed that the Revenue was not able to show that the inventories were acquired out of borrowings and interest was to be capitalized keeping in view AS-16, issued by the Institute of Chartered Accountants of India. Further, the Tribunal also noted that the advances received from the customers by the Assessee were at Rs. 68.57 crores, while the closing work in progress was Rs. 45.04 crores and the advances were higher than the closing work in progress as on 31 March 2012. These findings, as rightly contended by the learned Counsel for the Respondent-Assessee, are purely factual issues.

8. Ms. Linhares placed reliance on the decision of the Apex Court in the case of *CIT v. British Paints India Ltd.* [1992] Supp 1 SCC 55. We have perused this decision. When the decision was rendered, the Assessment Years 1963-64 and 1964-65 were under consideration. Mr. Kulkarni has placed on record the Section 145 which was applicable to those assessment years. Now, Section 145(2) has been amended and contemplates a notification by the Central Government in respect of the accounting standards to be followed by the class of assesseees. Mr. Kulkarni placed reliance on the decision of the Apex Court in the case of *J.K. Industries Ltd. v. Union of India* [\[2007\] 165 Taxman 323/\[2008\] 297 ITR 176](#) in respect of the accounting standards. According to Mr. Kulkarni even though the decision is rendered under the Companies Act, the observations have been made which are relevant for construing Section 145(2) of the Income-tax Act, 1961. Be that as it may, in the decision of the Apex Court in *British Paints India Ltd.* (*supra*), itself the Apex Court has indicted what is profit or trade or business and how it is to be

ascertained and the questions analogous to the same, as involved in the present appeal, are essentially questions of fact. Both the authorities have rendered a concurrent finding of fact. The learned Standing Counsel for the appellant has not been able to demonstrate as to how the question of law will still arise, if the question of fact rendered by both the authorities are confirmed. The scope of the appeal under Section 260A of the Income Tax Act, is well settled. The High Court will entertain an appeal on pure questions of facts rendered on the assessment of evidence.

9. In the circumstances, since no question of law is involved and we are only called upon to adjudicate the questions of fact, the appeal cannot be entertained and the same is dismissed.

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*In favour of assessee.