IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN
&
THE HONOURABLE MR. JUSTICE ASHOK MENON

MONDAY, THE 18TH DAY OF DECEMBER 2017/27TH AGRAHAYANA, 1939

ITA.No. 134 of 2007

AGAINST THE ORDER/JUDGMENT IN ITA 30/COCH/2002 of
I.T.A.TRIBUNAL,COCHIN BENCH DATED 30-04-2007

APPELLANT(S)/APPELLANT/APPELLANT:

THE COMMISSIONER OF INCOME TAX,
THRISSUR.

BY ADV. SRI.GEORGE K. GEORGE, SC FOR IT

RESPONDENT(S)/RESPONDENT:

M/S.THE KERALA STATE FINANCIAL
ENTERPRISES LTD., 'BHADRATHA',, MUSEUM ROAD, THRISSUR.

R, BY ADV. SRI.ANIL D. NAIR
R, BY ADV. SRI.P.BENNY THOMAS
R, BY ADV. SRI.K.JOHN MATHAI
R, BY ADV. SRI.E.K.NANDAKUMAR
R, BY ADV. SMT.PREETHA S.NAIR

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 18-12-2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

APPELLANT(S) ANNEXURES:

ANNEXURE A COPY OF THE ORDER OF THE ASSESSING OFFICER U/2(2) OF THE INCOME TAX ACT DATED 8-3-2000.

ANNEXURE B COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX (APPEALS) IN ITA NO.6/INI/JC/TCR/CIT-II/2000-2001 DATED 13-06-2002.

ANNEXURE C COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL IN INTEREST TAX APPEAL NO.30/COCH/2002 DATED 30-04-2007.

RESPONDENT(S) ANNEXURES:

NIL

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PA TO JUDGE

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K.VINOD CHANDRAN & ASHOK MENON, JJ.

I.T.A. 134 of 2007

Dated this the 18th day of December, 2017

J U D G M E N T

Ashok Menon, J.

The Revenue is on appeal aggrieved by the order of the Income Tax Appellate Tribunal, Cochin Bench in ITA No.30/Coch/ 2002 for the assessment year 1997-98 pertaining to the assessee, Kerala State Financial Enterprises Ltd., Thrissur, a Kerala State Government Undertaking, engaged in the business of conducting chitties, advancing loans, etc. The assessee had filed it's return of chargeable interest at Rs.14,78,47,770/-. However, while completing the assessment under Section 8(2) of the Income Tax Act, the assessing officer made various additions to the tune of Rs.18,43,38,284/- on account of interest received from hire purchase transaction (Finance charges), F.D. loan interest, trade loan interest, interest on housing loan/vehicle loans to employees, etc; and raised a demand of Rs.99,65,582/- on the premise that the assessee company is “credit institution”, a taxable entity under the Interest Tax Act.

2. On appeal, the Commissioner of Income Tax (Appeals) at Annexure B order confirmed the additions made by the assessing officer and found that the assessee is a financial company in terms of clause (vi) of Section 2(5B) of the Interest Tax Act as there is voluntary payment of interest tax on some interest like default chitty. On second appeal before the Income Tax Appellate Tribunal by the assessee, relying on an earlier Order of the Tribunal concerning finance charges, the appeal was partly allowed vide Annexure C order. It is this order that stands challenged by the Revenue before us.

3. The only legal issue that arises for consideration in this appeal is whether "finance charges" such as, interest received from hire purchase transaction, and other interest would attract tax on interest under the Interest Tax Act, 1974.

4. The argument advanced for the Revenue is that, finance charges collected by the respondent for vehicle financing as well as other hire purchase is nothing, but "interest" attracting tax. Whereas, the respondent contended that hire purchase transactions are outside the scope of interest tax and hence not taxable.

5. We heard the learned Counsel appearing for the Revenue and the assessee.

6. It would be apposite to extract the definition of 'interest' under Section 2(7) of the Interest Tax Act, which reads thus:

> "Sec.2(7): 'Interest' means interest on loans and advances made in India and includes.-
>
> (a) commitment charges on unutilised portion of any credit sanctioned for being availed of in India; and
>
> (b) discount on promissory notes and bills of exchange drawn or made in India, but does not include -
>
> (i) interest referred to in sub-section (1B) of S.42 of the Reserve Bank of India Act, 1934(2) of 1934;
>
> (ii) discount on treasury bills."

The Tribunal had relied on another decision of the Tribunal dated 19-04-2004 to conclude that financial charges may not be subjected to tax and following the decision, the appeal was partly allowed in favour of the assessee. Admittedly, the finance charges involved in the instant case are from hire purchase of vehicles. The position has now been settled by a precedent of this Court involving the same assessee, Commissioner of Income Tax v. K.S.F.E. Ltd.

(2008) 220 CTR (Ker) 286, the Division bench held thus:

> "Applying the principle laid down by the Supreme Court in Sundaram Finance Ltd.'s case (supra), we already found that the transaction is a genuine loan transaction, though it is styled as a hire-purchase agreement. Another instruction relied on by the respondents is Instruction No.1425 in F.No.275/90/80 IT(B) dt. 18th Nov. 1981 issued by the CBDT with reference to s.194A of the IT Act which provides for deduction of tax at source on interest income. What is stated in this is that no deduction should be made at the time of payment of hire-purchase installment. We do not know how this circular prohibiting deduction of tax at source on hire-purchase installment of which interest is only an element can apply to the facts of this case. Moreover, it is to be noted that hire purchase companies are squarely covered by definition of "credit institutions" under the Act and are liable to pay tax on charge of interest on loans and advances. It is immaterial whether a loan or advance is called hire-purchase agreement or not. On the other hand, what is to be considered is whether the transaction involved is really a loan or advance and if the transaction is found so, then the interest earned on the same is taxable under the Interest-tax Act. Besides the decision of the Supreme Court in Sundaram Finance Ltd.'s case (supra), the other

decision relied on by the assessees is that of the Punjab & Haryana High Court in Deep Hire Purchase (P) Ltd. v. CIT (2005) 195 CTR (P&H) 174: (2005) 274 ITR 69 (P&H). We notice that this is a case where Punjab & Haryana High Court had only confirmed the order of the Tribunal remanding the matter to the AO with an observation that interest on financing only attracts tax under s.2(7) of the Act. However, the question whether motor vehicle financing of the kind carried on by the respondent which is the issue in this case attracts tax under the Act or not was not raised or decided by that Court. Similarly, another decision relied on by the respondent is that of the Madras High Court in CIT v. Harita Finance Ltd. (2006) 283 ITR 370 (Mad) also does not deal with the nature of transaction involved in this case. On the other hand, the Court has only held that Tribunal's findings on facts are binding and conclusive and there is no scope for interference in reference case. However, in this case Revenue had specifically canvassed against the findings of the Tribunal contrary to the concurrent findings entered by the assessing authority and the first appellate authority based on documents and with reference to specific hire-purchase agreements entered into between the respondents and their parties. After going through the facts pertaining to transactions extracted above, we find

> no justification for the Tribunal to come to the findings different from that of the two lower authorities. Besides this, we have already noticed that the exercise of option provided in the agreement relied on by the Tribunal is contrary to the real deal and against the provisions of the Motor Vehicles Act because of registration of vehicles by the borrowers in their own names. The Tribunal's findings are based on wrong assumption of facts and they have decided the matter without even referring to the provisions of the Motor Vehicles Act which comprehensively deal with all transactions in motor vehicles. We, therefore, allow the appeals by reversing the order of the Tribunal and restoring the assessments confirmed in first appeals."

In view of the above cited decision of the Division Bench concerning the same assessee, on identical facts, we find no reason to be at variance, and therefore, we answer the questions raised in favour of the Revenue and against the assessee. The appeal is allowed in favour of the Revenue and the assessment as confirmed by the first appellate authority stands restored. No costs.

Sd/-
K.VINOD CHANDRAN
Judge

Sd/-
ASHOK MENON
Judge

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