

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 11.05.2016

+ **ITA 546/2013**

COMMISSIONER OF INCOME TAX – I ... Appellant

versus

AMAR UJALA PUBLICATION LTD ... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Rahul Chaudhary with Mr Raghvendra Singh and
Mr Anup Kesari

For the Respondent : Mr Ved Jain with Mr Pranjal Srivastava

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J

1. This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the said Act') is directed against the order passed by the Income Tax Appellate Tribunal in ITA 1808/Del/2012 pertaining to the assessment year 2008-09.

2. The substantial question of law, which arises for our consideration in this appeal, is as follows:-

“Whether the Income Tax Appellate Tribunal as also the Commissioner of Income Tax (Appeals) had not erred in law and / or on facts in deleting the disallowance on discount and interest on borrowing through commercial papers and Non-Convertible Debentures (NCDs) amounting to ₹ 10,79,75,982/-?”

3. The Assessing Officer, by virtue of the assessment order dated 29.12.2010, disallowed expenditure to the tune of ₹ 10,79,75,982/- on the ground that the expenditure was not for business purposes. The said figure of ₹ 10,79,75,982/- had two components. The first component was the discount on commercial paper amounting to ₹ 8,45,75,982/-. The second component was the amount of ₹ 2.34 crores which was interest on non-convertible debentures.

4. The Assessing Officer had required the assessee to explain these expenditures. The respondent/assessee submitted that A & M Publications Limited had merged with the respondent/assessee with effect from 01.04.2007, consequent upon an order passed by this Court on 28.08.2008. It was explained by the respondent/assessee that the commercial paper was issued on 01.11.2006 by the respondent/assessee and A & M Publications

Limited to give effect to the Company Law Board's order dated 07.08.2006 for payment of ₹ 160 crores to Ajay Aggarwal and others. It was further pointed out that the expenses incurred on commercial paper pertaining to the assessment year 2006-07 had been booked under respective accounting heads in both the companies (i.e., the respondent/assessee company and A & M Publications Limited) in the financial year 2006-07. The discount on commercial paper issued by the respondent/assessee was ₹ 4,22,87,991/- and the discount on commercial paper issued by A & M Publications Limited was ₹ 4,22,87,991/- resulting in a total of ₹ 8,45,75,982/-. Since there was a shortage of funds, the non-convertible debentures had also been issued. The Assessing Officer observed that in the proceedings before the Company Law Board, a prayer had been made on the part of the Amar Ujala Group to buy the entire shareholding of Shri Ajay Aggarwal in the said companies. The latter agreed to sell the entire shareholding of 34.33% in both the companies for a total sale consideration of ₹ 16 crores being the fair market price of the shares. After this, the Amar Ujala group was to have complete control of the companies and Shri Ajay Aggarwal and others connected with him would not have any relationship with the said companies in any manner after receiving the full and final consideration. According to the Assessing Officer, the shares of Shri Ajay Aggarwal and

others were bought by the respondent/assessee and the transaction was purely one of acquisition of shares and had no bearing on the business being carried out ordinarily by the respondent/assessee. The Assessing Officer also observed that during the year in question, the respondent/assessee and A & M Publications Limited had merged as per the directions of this Court and there was no cross holding of shares in the Amar Ujala group, as there existed only one combined entity and that the shares bought by the Amar Ujala group were its internal holding. Consequently, the Assessing Officer held that the expenditure was not for the business purposes and, therefore, disallowed the discount on commercial paper amounting to ₹ 8,45,75,982/- and added it back to the total income of the respondent/assessee. The interest amount of ₹ 2.34 crores on non-convertible debentures which had been issued to repay the commercial papers, which, in turn, according to the Assessing Officer, had been taken for providing funds for purchase of shares of Shri Ajay Aggarwal and others was also held by the Assessing Officer to be not allowable under Sections 36(l)(iii), 37(1) and 57(iii) of the said Act.

5. Being aggrieved by the said disallowance of the total sum of ₹ 10,79,75,982/- on discount and interest on borrowing through commercial

paper and non-convertible debentures, the respondent/assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who decided, by virtue of his order dated 20.01.2012, in favour of the respondent/assessee. The Commissioner of Income Tax (Appeals) did not agree with the finding and reasoning of the Assessing Officer. He observed that there were two companies, namely, the respondent/assessee and A & M Publications Limited. In the preceding year, consequent upon the order passed by the Company Law Board on 07.08.2006, the respondent/assessee bought the shares held by Shri Ajay Aggarwal and others in A & M Publications Limited. Similarly, A & M Publications Limited had bought the shares of the respondent/assessee held by Shri Ajay Aggarwal and others. The Commissioner of Income Tax (Appeals), however, observed that after the acquisition of these shares, A & M Publications Limited merged with and into the respondent/assessee resulting in the cancellation of the shareholding held by each of the companies, which meant that the shares held by Shri Ajay Aggarwal and others also got cancelled. It was observed that as on 01.04.2007 post-merger, the entire funds owned by the respondent/assessee were deployed in its business. After examining the position of the balance-sheet as on 01.04.2007 and as it stood on the closing day of the year, i.e., 31.03.2008, the Commissioner of Income Tax

(Appeals) observed that the entire borrowed funds on which the interest had been paid had been utilized for the purpose of business. It was noted that the re-structuring of the respondent/ assessee was affected in the preceding year and that during the year under consideration there was no implication of such re-structuring so far as the allowability of interest on borrowed funds was concerned. Consequently, the Commissioner of Income Tax (Appeals) held that the addition of ₹ 10,79,75,982/- could not be sustained on facts and in law and, therefore, deleted the same.

6. Being aggrieved by the decision of the Commissioner of Income Tax (Appeals), the revenue preferred an appeal before the Income Tax Appellate Tribunal being ITA No. 1808/Del/2012. The Tribunal noted that the utilization of the funds borrowed for the purpose of buying the shares of Shri Ajay Aggarwal and others by the respondent/assessee, consequent upon the order dated 07.08.2006 passed by the Company Law Board, was not applicable for the year under consideration. The Tribunal observed that it was in the preceding year that the shares were bought by the two companies and that after the acquisition of the shares, the two companies merged. As a result of the merger, the shareholding of both these

companies got cancelled also resulting in the cancellation of the shares held by Shri Ajay Aggarwal and others.

7. The Tribunal further observed that after the merger, the entire funds of the company of the respondent/assessee were deployed for the purpose of its business. It was noted that the respondent/assessee, as per the balance-sheet drawn on 31.03.2008, owned funds of ₹ 51.26 crores and had secured loans of ₹ 165.63 crores as against fixed assets of ₹ 171.64 crores and current assets of ₹ 118 crores. It was observed that the funds had been deployed in these assets and this fact remained undisputed. Thus, the Tribunal arrived at a finding of fact that the entire borrowed funds, during the year, stood utilized for the purposes of business of the respondent/assessee. Consequently, the Tribunal agreed with the decision of the Commissioner of Income Tax (Appeals) and dismissed the appeal of the Department for the assessment year 2008-09.

8. Being aggrieved by the decision of the Tribunal, the present appeal has been filed in which the substantial question of law, referred to above, has been framed.

9. We have heard the counsel for the parties. The counsel reiterated their respective stands as crystallized before the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal. The main point which needs to be stressed is that we are concerned with the assessment year 2008-09. In the present year, there was no re-structuring and/or purchase of shares. All that had happened in the preceding year. As on 01.04.2007 itself, which was the first day of the year under consideration, A & M Publications Limited stood merged with and into the respondent / assessee. All the funds available at that point of time with the respondent / assessee were, in the course of the year, deployed in the business of the respondent/assessee. Therefore, the Assessing Officer could not have disallowed the discount and interest on borrowing through commercial papers and non-convertible debentures. Consequently, the Commissioner of Income Tax (Appeals) and the Tribunal have come to the correct conclusion and have deleted the addition made by the Assessing Officer.

10. As a result, the question posed is answered by stating that the Income Tax Appellate Tribunal as also the Commissioner of Income Tax (Appeals) had not erred in law or on facts in deleting the disallowance on discount

and interest on borrowing through commercial papers and non-convertible debentures amounting to ₹ 10,79,75,982/-.

11. In view of the fact that the question has been answered against the appellant/revenue, the appeal is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

**MAY 11, 2016
SR**

SANJEEV SACHDEVA, J

