



V

* **HIGH COURT OF DELHI : NEW DELHI**

ITA No. 888/2007

% Date of decision: 25th January, 2008

COMMISSIONER OF INCOME TAX Appellant
Through:Ms.P.L.Bansal, Adv.

versus

PAWAN KUMAR JAIN Respondent
Through:Dr.Rakesh Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Madan B.Lokur, J. (Oral)

The Revenue is aggrieved by an order dated 17th November, 2006 passed by Income Tax Appellate Tribunal, Bench G, in ITA No.4369/Del/2004 and CO No.196/Del/2006 relevant for the assessment year 2001-02.

2. The question that has arisen for our consideration is whether the Assessee is entitled to reduce the interest paid by it on a loan taken by it from the Bank of Rajasthan, by



adjusting the interest received by it on fixed deposits which were pledged with the Bank of Rajasthan for obtaining the loan.

3. It appears to us that the matter is fully covered by the decision of this Court in *Commissioner of Income Tax vs. Shri Ram Honda Power Equip (2007) 289 ITR 475* and that no substantial question of law arises.

4. In paragraphs 35 & 36 of the above decision, this Court has considered two categories of fixed deposits taken by the Assessee. The first category is fixed deposits taken by the Assessee for the purposes of parking of its surplus funds. The second category is fixed deposits that have been taken by the Assessee for mandatorily keeping the monies with a bank for the purposes of availing credit facilities etc. for its export business. This Court held, on a consideration of the decisions of the Kerala High Court in *Nanji Topanbhai and Co. vs. Asst. Commissioner of Income Tax & Ors. (2000) 243 ITR 192*, *K.Rabindranathan Nair vs. Deputy Commissioner of Income Tax (Assessment) & Anr. (2003) 262 ITR 669*



and *Urban Stanislaus Co. vs. Commissioner of Income Tax (2003) 263 ITR 10*, that in both the situations, the interest earned by the Assessee on the fixed deposits would have to be treated as income from other sources and not business income.

5. In paragraph 37 of the decision, this Court added a caveat to the above rule to the effect that in cases where the Assessing Officer has given a specific finding that the interest income is business income, and that finding has not been challenged by the Revenue, the question whether the interest earned on the fixed deposits is business income or income from other sources will not be reopened.

6. In so far as the facts of the present case are concerned, the Assessee had taken some fixed deposits for the purposes of availing credit facilities from the Bank of Rajasthan. It had claimed a deduction on the ground that the interest earned on the fixed deposits so obtained is business income. This has been accepted by the Assessing Officer in his assessment order as is apparent from the acceptance of the computation of income given by the



Assessee. Therefore, we are proceeding on the basis that the income earned by the Assessee on the fixed deposits receipts pledged with the Bank of Rajasthan are required to be treated as business income in view of the assessment order passed in the case of the Assessee.

7. The second question that would arise, as a result of the decision of this Court, is whether the deduction claimed by the Assessee on the interest earned from these fixed deposits can be adjusted against the interest paid by the Assessee to the Bank of Rajasthan in view of Explanation (baa) to Section 80HHC of the Income Tax Act, 1961.

8. In paragraph (ix) of the decision rendered by this Court under the heading 'Conclusions', it has been held as follows:-

"Where, as a result of the computation of profits and gains of business and profession, the Assessing Officer treats the interest receipt as business income, then deduction should be permissible, in terms of Explanation (baa) of the net interest, i.e., the gross interest less the expenditure incurred for the purposes of earning such interest. The nexus between obtaining the loan and paying interest thereon (laying out the expenditure by way of interest) for the purpose of earning the interest on the



fixed deposit, to draw an analogy from section 37, will require to be shown by the assessee for application of the netting principle."

9. On reading of the aforesaid conclusion, it is clear that a nexus has to be established between obtaining the loan (as in the case of the Assessee from the Bank of Rajasthan) and paying interest thereon with the purpose of earning interest on the fixed deposits which have been pledged with the Bank for the purposes of obtaining the loan. Whether the nexus is established or not is the question and that has to be determined by the authorities below as a question of fact.

10. It is submitted by learned counsel for the Revenue that in so far as the present case is concerned, the matter ought to be remanded back to the file of the Assessing Officer for determining the fact whether the nexus has been established or not.

11. On a reading of the order passed by the Tribunal, we are not in agreement with the view expressed by the learned counsel for the Revenue.

12. It has been mentioned in the paragraph 3 of the order



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passed by the Tribunal that the Commissioner of Income Tax (Appeals) had held that the fixed deposits pledged by the Assessee were a part of the business assets and the interest earned thereon had a direct nexus with the payment of interest. The Tribunal has also recorded in paragraph 4 of the order that the interest received and paid have a close nexus, on the facts found by the Commissioner of Income Tax (Appeals) which were not disputed before the Tribunal.

13. This being the factual position, it is quite clear that the Assessee had been able to establish the nexus as required by conclusion (ix) arrived at by this Court in *Shri Ram Honda Power Equip.* As mentioned above, this is a finding of fact which cannot be disturbed unless and until some perversity is shown. In so far as the present case is concerned, we do not find any perversity in the factual conclusions drawn by the Tribunal and the Commissioner of Income Tax (Appeals).

14. Under the circumstances, we find that no substantial question of law arises for consideration and the appeal is



accordingly dismissed.

Madan Lokur
MADAN B. LOKUR, J

V.B. Gupta
V.B. GUPTA, J

JANUARY 25, 2008
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