



* IN THE HIGH COURT OF DELHI AT NEW DELHI
 + ITA Nos 238/2009, 292/2009, 294/2009

THE COMMISSIONER OF INCOME TAX,
 DELHI-V

..... Appellant
 Through: Ms Sonia Mathur with
 Mr Praveen Chaturvedi,
 Advocates

Versus

M/S PRADEEP HOLDINGS PVT LTD

..... Respondent
 Through: Mr O P Sapra with
 Mr Sandeep Sapra, Advocates

CORAM

HON'BLE MR JUSTICE VIKRAMAJIT SEN
 HON'BLE MR JUSTICE RAJIV SHAKDHER

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

ORDER
 26.02.2009

RAJIV SHAKDHER, J.

1. These are appeals preferred by the Revenue under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') against a common judgment dated 20.03.2008 passed by the Income Tax Appellate Tribunal (hereinafter referred to as the 'Tribunal') in ITA No 4428/Del/03, ITA No 4114/Del/05, ITA No 1630/Del/06 pertaining to assessment years 2001-02, 2002-03 and 2003-04 respectively.

2. The only issue which arises for consideration in the present appeals is whether the Tribunal had misdirected itself in law in sustaining the claim of the assessee for allowance of interest and other charges, if any, as business expenditure.



business expenditure by the assessee, the claim under the head interest paid by the assessee is equivalent to a sum of Rs 14,29,542/- while the balance sum of Rs 6,081/- pertains to bank charges, filing and audit fee. Similarly, with respect to assessment years 2002-03 and 2003-04 the Assessing Officer disallowed interest amounting to Rs 12,59,788 and Rs 14,29,542 respectively, for the reasons stated in his order for assessment year 2001-02. Accordingly, in the succeeding paragraphs, we would touch upon facts as stated in the orders of the authorities below for the assessment year 2001-02.

3. Continuing with narration of facts, the Assessing Officer vide his order dated 22.01.2003 disallowed the assessee's claim. In so far as the claim on account of interest was concerned, the same was disallowed by the Assessing Officer as he was of the view that the interest was paid in respect of borrowings which were used to purchase shares kept as "investment" as against "stock-in-trade". Curiously enough, the Assessing Officer without discussion disallowed even the expenses towards bank charges, filing and audit fee.

4. Aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [hereinafter referred to as the 'CIT(A)']. The CIT(A) vide order dated 18.07.2003 sustained the view taken by the Assessing Officer despite the entreaties of the assessee that: it had been in the business of investment in shares since inception i.e., 1986 and till date it had made investments amounting to Rs 2.67 crores; and furthermore, at least from assessment year 1997-98 till assessment year 2000-01 it had consistently shown the shares under the head investment in the balance sheet despite which the profit on sale of



assessee that the situation vis-à-vis the deduction claimed by it with respect to interest on borrowings used to purchase shares was no different. In other words interest on such borrowings was claimed as part of the business loss in the past which was allowed by the Department. It was, thus, the submission of the assessee that there had been no change in the manner in which the transactions were reflected in its account or in the treatment of the income or loss which arose therefrom. Given these circumstances, the assessee had submitted it was the real nature of the transaction which had to be looked at by the Department. The Department could not have on identical set of facts taken a view, in the assessment years in question, to the effect that the shares bought by the assessee were in the nature of an "investment" and not "stock-in-trade".

4.1. The CIT(A), however, rejected the submissions made by the assessee and sustained the order of the Assessing Officer. It is pertinent to note that the CIT(A) despite reference to the assessee's submission that for assessment year 1997-98 the assessee had claimed business loss which included an amount towards interest amounting to Rs 34,01,963/- which had been allowed by the Department; chose not to discuss the same.

5. The assessee being aggrieved, carried the matter in appeal to the Tribunal. The Tribunal by virtue of the impugned judgment reversed the order of the CIT(A) and the Assessing Officer. The Tribunal in the impugned judgment returned the following findings of fact:-

(i) the assessee was carrying on the business of purchase and sale of shares. For this purpose, the Tribunal quoted the following findings



invest and deal in shares. Therefore, any income derived should be treated as business income....."

(ii) in the assessment order for assessment year 1997-98, passed under Section 143(3) of the Act, the Assessing Officer accepted the business loss of Rs 30,04,730/- which had embedded in it an interest component of Rs 34,01,963/-. The said loss had been allowed by the Assessing Officer though it was not allowed to be carried forward in view of the fact that the assessee had not filed its return in time;

(iii) for assessment year 1998-99 the assessee had claimed a loss of Rs 3,80,098/- which again contained an interest component of Rs 6,84,056/- in it. The said return was accepted by the Department though under Section 143(1)(a). Identical situation obtained with respect to assessment years 1999-2000 and 2000-01;

(iv) in the return filed for one of the assessment years under consideration i.e assessment year 2003-04, the assessee has shown an income of Rs 11,28,146/- which is a sum total of interest income amounting to Rs 5,65,646/- and profit on sale of shares in the sum of Rs 5,62,500/-. Against the said income of Rs 11,28,146/- total expenses claimed amounted to Rs 14,37,629/-. The said total expenses of Rs 14,37,629/- comprised of interest paid by the assessee amounting to Rs 14,29,542/-. Accordingly, the assessee had claimed a loss of Rs 3,09,483/- (Rs 11,28,146 - 14,37,629). The Assessing Officer has accepted the loss of Rs 3,09,483/- even while disallowing the deduction claimed by the assessee towards interest amounting to Rs 14,29,542/-.

5.1 The Tribunal after noticing these factual aspects of the matter, which were not controverted by the Revenue before it, came to the conclusion that the assessee's stand had to be sustained;



the shares in issue were not held as an 'investment'. The Tribunal concluded by holding that interest on loan taken for the purposes of trading transactions deserved to be allowed under section 36(1)(iii) of the Act.

6. Before us the learned counsel for the Revenue urged, while fairly conceding that no further proceedings had been initiated by the Department for assessment years 1997-98, 1998-99 or assessment year 1999-2000, that both the order of the Assessing Officer, as well as, the CIT(A) clearly indicated that they had taken into account the fact that in the balance sheet of the assessee for the assessment years in issue, the transaction in shares had been shown as an investment. Therefore, it was the contention of the learned counsel for the Revenue that the rule of consistency would not apply in present fact situation and that, the interest claimed by the assessee as deduction was in respect of borrowings which were used by the assessee to purchase shares which were not held as stock-in-trade.

7. Having heard the learned counsel for the Revenue, we are of the view that the impugned judgment deserves to be sustained for the following reasons:-

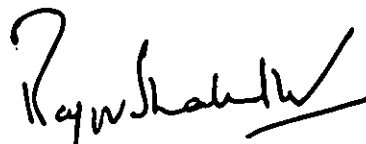
- (i) there is a finding of the Tribunal that the assessee dealt in shares;
- (ii) the assessee has all along shown its purchase of shares as investment in its balance sheet despite which the interest incurred by the assessee on the loan taken for purchasing the said shares has been claimed as a business expense which has been accepted and allowed in the past by the Revenue; and
- (iii) lastly, the Revenue has accepted this position clearly for



years 1998-99 and 2000-01.

8. In our view it is fairly well settled that in discerning whether a particular income or expense falls within the four corners of the Act the Revenue has to look at the real nature of the transaction and not merely the manner in which it is reflected in the books of the assessee. [see *Kedarnath Jute Mfg. Co Ltd vs CIT; (1971) 82 ITR 363 (SC)*].

There is no doubt in our minds that in the background of the findings of fact returned by the Tribunal that the shares in issue were held as 'stock-in-trade'. Both on this ground as also on the principle of consistency, as held by the Tribunal, the expense in issue ought to be allowed. Resultantly, we find no ground to interfere in the order of the Tribunal. No substantial question of law has arisen for our consideration. The appeals are dismissed.


RAJIV SHAKDHER, J


VIKRAMAJIT SEN, J

February 26, 2009
mb