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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgement delivered on:07.02.2017*

\+ **ITA 385/2004**

M/S TEJ QUEBCOR PRINTING LTD. ..... Appellant
Through: Dr. Rakesh Gupta, Mr. T.R. Talwar and Ms. Monika Ghai, Advocates.

Versus

JOINT COMMISSIONER OF INCOME TAX ..... Respondent
Through: Mr. Ashok K. Manchanda and Mr. Raghvendra Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

S. RAVINDRA BHAT, J. (OPEN COURT):-

1. The questions of law framed in this case on 08.02.2005 are as follows:-

> *"(i) Whether the Tribuna1 was correct in law in holding that on the facts and in the circumstances of the case, provisions of Section 40(a)(i) of the Income Tax Act read with the provisions of Section 10 (15)(iv)(c) were applicable to the assessee's case in relation to the assessment year 1996-97?*
>
> *(ii) Whether the approval of the Govt. of India, Ministry of Finance in their letter dated 25.5.95 approving the loan amount, rate of interest and the mode of repayment did constitute the approval of the Central Govt. in this behalf with regard to the rate of interest, terms of the loan and its repayment of purpose of Section10(15)(iv)(c) of the Income Tax Act?"*

2. The assessee was at the relevant time engaged in the business of printing and binding of telephone directories. For its business, it imported machinery from a foreign supplier i.e. M/s. Quebecor Printing Ltd. Inc., Canada on deferred credit to the tune of Canadian dollars 25,74,537 equivalent to ₹5,94,86,535/-. It sought the benefit of Section 10(15)(iv)(c) of the Income Tax Act, 1961 (hereinafter to be referred as 'the Act') by seeking approval of the Central Government. By a letter dated 25.05.1995 the Department of Economic Affairs, Ministry of Finance of the Central Government approved the proposal but advised the assessee at the same time to approach the Reserve Bank of India ('RBI') since the amounts were to be remitted in foreign exchange. The RBI granted its approval on 20.12.1995 in the following terms:-

> *"With reference to your letter dated 25/04/1995, on the subject cited above, I am directed to convey the approval of the Government or India, Ministry of Finance, Department of Economic Affairs, for your obtaining a Supplier's Credit from M/s. Quebecor Printing Inc., Canada, for financing the import of capital goods, on the following terms and conditions:*
>
> *a) Loan Amount : Canadian Dollar 2,574,536.79/-*
> *b) Rate of interest : 8.3359% p.a.*
> *c) Repayment Terms : In 10 equal semi-annual instalments commencing from June 1997.*
>
> *2. No other charges in foreign currency or Indian Rupee other than those specifically authorized in terms of this sanction will be permitted for payment.*
>
> *3. You are not permitted to exercise any multi-currency option.*
>
> *4. You are requisite to obtain the approval of the Reserve Bank of India, Surcharge Control Deptt., through your*

bankers under FERA 1973 in order to satisfy the Reserve Bank that the terms of the Govt. approval are complied with and that no additional foreign exchange liability, either express or implied, is being assumed under the arrangements.

5. Kindly note that in case the credit is required to be guaranteed by a Bank/Development Financial Institution (DFI), the same shall be provided by scheduled commercial bank(s) or DFI(s) in India. The counter guarantee from a foreign bank or confirmation of a scheduled bank or DFI's guarantee by a foreign bank will not be permitted under any circumstances. The guarantee issuance, however, would be subject to the authorization of Industrial & Export Credit Department of Reserve Bank of India under CAS.

6. The Reserve Bank of India would be advised to allow you to draw any loan and effect the advance payment/down payment only after your agreement with the lender is taken on record by this Department. You are, therefore, requested to make available to this Department two executed copies of the agreement immediately, after it is entered into, with reference to this sanction letter. Please note that if the said executed copies of the agreement are not made available to this Department within 3 months of the date of issue of this sanction letter, the approval for External Commercial Borrowings contained herein shall automatically lapse unless specifically extended by this Department.

Yours faithfully,

Sd/-
(D.J. Pandian)
Deputy Secretary (ECB)"

3. In these circumstances, the assessee claimed a deduction in its returns filed on 30.11.1996. This was disallowed on 22.12.1998. In the meanwhile, it had approached the Department of Revenue of the Central Government seeking its approval. On 15.01.1999, the Department of Revenue granted

the approval in the following terms:-

> *" I am directed to refer to your letter No.NIL dated 23.11.98 on the above cited subject and to convey the approval of the Central Government to rate of interest, fees and other charges in respect of the loan/credit taken by you from the foreign party as per details, indicated below for the purpose of section 10(15)(iv)(c) of the Income-tax Act, 1961.*
>
> *Foreign Lender : M/s Quebecor Printing Inc., Canada*
> *Amount of Loan : Canadian dollar 2,277,422.77*
> *Rate of interest : 8.3359% p.a.*
> *Arrangement Fee : ----------*
> *Management Fee : ----------*
> *Agency Fee : ----------*
> *Commitment Fee : ----------*
>
> *Please intimate early the date of payment and amount of payment of the interest and the country to which the amount was remitted."*

4. The Assessment Officer ('AO') while completing assessment was of the opinion that since tax was deductable under Section 195 of the Act, the amounts had to be disallowed under Section 40(a)(i) of the Act and proceeded to do so. The CIT(A), whom the assessee approached, granted relief taking a broad view of the matter. The Commissioner was of the opinion that the provision relied upon i.e. Section 10(15)(iv)(c) of the Act, merely talks of the Central Government and that in the circumstances of the case since the assessee had already obtained the approval of the Department of Economic Affairs and subsequently of the RBI (the latter with respect to the foreign exchange of loan) and most crucially, since the approval referred to in the provision related to the rate of interest, there was compliance with the statutory conditions.

5. The Income Tax Appellate Tribunal ('ITAT'), to which the Revenue appealed, upset the order of the CIT(A). The ITAT was of the opinion that since the assessee had applied to the concerned Department i.e. the Department of Revenue for the first time on 02.04.1997 after filing the returns, and it had failed to deduct the amounts under Section 195 of the Act, the AO could not be faulted in disallowing the amounts. The ITAT also felt that since the approval of the Department of Revenue was more than a year, the assessee was told that benefits could not be granted in the circumstances of the case.

6. Learned counsel for the assessee points out that Section 10(15)(iv)(c) of the Act merely talks of approval of the Central Government viz-a-viz the rate of interest. Given that the Department of Economic Affairs is also a part of the Central Government and that it had granted such approval without, in any manner, indicating that the Department of Revenue was the concerned agency but merely cautioned to obtain the RBI's approval on account of the foreign exchange remittance, the denial of relief was unwarranted. He commended the order of CIT(A) as containing the correct approach in the facts of the case. Counsel for the Revenue, on the other hand, urged that the reference to the Central Government has to be necessarily urged as one meaning the 'concerned department', which in this case is none other than the Department of Revenue. He highlighted the fact that the assessee approached the Department of Revenue after an inordinate delay though it was asked to do so by the RBI on 22.12.1995. By the time it did approach, it had already filed the return. Given these circumstances, the invocation of Section 40(a)(i) of the Act was not unjustified, the assessee would very well availed its opportunity of approaching the AO under

Section 195 of the Act, which it did not at the relevant point of time.

7. Section 10(15)(iv)(c) of the Act reads as follows:-

> *"(15)(iv) interest payable -*
> *(c) by an industrial undertaking in India on any moneys borrowed or debt incurred by it in a foreign country in respect of the purchase outside India of raw materials or components or capital plant and machinery, to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Govt. in this behalf, having regard to the terms of the loan or debt and its repayment."*

8. A plain reading of the provision clearly bears the fact that its approval of the Central Government which is necessary – not with respect to the transaction per se but with regard to the rate of interest. Given this objective factor, and the fact that the Revenue does not appear to have notified any specific agency – i.e. the Department of Revenue/CBDT or any other Department by naming it (unlike Section 10B, Section 35(2)(a)(b) etc.), where either the specific power is granted or the concerned authority/agency itself is mentioned; the particular elusion to the Central Government cannot, in the opinion of the Court in any manner, undermine or render valueless the approval granted by one of the agencies or departments of the Government. This view is more crucially important - given the fact that in the present case, the Department of Revenue did not express any contrary opinion in its approval dated 15.01.1999. In this context, the Court holds the Revenue's arguments - that the amounts mentioned in the Department of Revenue's approval do not tally with the approval granted by the Department of Economic Affairs utterly unsubstantial. What the Department of Economic Affairs has approved is the transaction and the rate of interest. That the assessee availed a lesser amount of credit or loan did not mean that there

was no approval. Particularly, because it is not the Revenue's case that the Department of Revenue approved an entirely different transaction.

9. In view of the above discussion, the Court is of the opinion that the impugned order of the ITAT cannot be sustained. It is accordingly set aside. The assessee is held entitled to the benefit of claim of deduction of interest made by it, in its return. The questions of laws are accordingly answered in favour of the assessee and against the Revenue. The appeal is allowed.

S. RAVINDRA BHAT, J.

NAJMI WAZIRI, J.

FEBRUARY 07, 2017
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