

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 333 of 2014**

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COMMISSIONER OF INCOME TAX-IV....Appellant(s)

Versus

JMC SADBHAV JOINT VENTURE....Opponent(s)

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Appearance:

MR NITIN K MEHTA, ADVOCATE for the Appellant(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MS JUSTICE SONIA GOKANI

Date : 22/04/2014
ORAL ORDER
(PER : HONOURABLE MS JUSTICE SONIA GOKANI)

1. Following is the substantial question of law raised in the present Tax Appeal preferred by the Revenue against the order of Income Tax Appellate Tribunal dated 2.8.2013:-

"Whether the Tribunal is right in law and on facts to delete the disallowance of Rs.1,63,35,068/- for A.Y.2009-10 made on account of interest expenses?"

2. We have heard learned counsel Mr. Nitin K. Mehta for the Revenue. Identical question of law was raised in case of the very assessee in the assessment year 2008-09 in Tax Appeal NO.334 of 2014. We have chosen not to entertain such question by holding thus:-

"3. The first issue concerns disallowance of Rs.12.42 lakhs (rounded off) made on account of interest expenses in the following factual background:-

3.1 The assessee is engaged in the business of contracts. It is an association of persons

which came into existence vide joint venture agreement dated 27.3.2007 entered into by and between JMC Project (India) Ltd. and Sadbhav Engineering Ltd with a object to execute the project awarded by the National Highway Authority of India ("NHAI" for short). The respondent had shown loss, which was incurred on account of provisions of interest made and paid to NHAI at the rate of 10% on mobilization advances given by NHAI as a part of fulfillment of agreement. Such mobilization advances received from NHAI by Sadbhav Engineering Ltd. had been given to JMC Project (India) Ltd. without charging any interest on the said amount again as per the agreement existed between the parties. The assessing officer on the ground that no ground is made out for establishing the business expediency, rejected the claim of the respondent. Therefore, appeal was preferred before CIT(Appeals).

4. CIT(Appeals) on elaborately examining the material on record noted that the respondent, an AOP, participated validly for a tender from NHAI and after fulfilling the required terms and conditions received the work contract. It was to construct new Four Lane Agra Bypass and as per the tender document, particularly, clause 60.6 of agreement, it was entitled to mobilization advances at the rate of 10% per annum. CIT(Appeals) also noted supplementary agreement dated 23.7.2007 between M/s. JMC Project (India) Ltd. and M/s.Sadbhav Eng.Ltd. Such subsequent agreement made it necessary for sub-contractor to execute the work required from NHAI. After having noted that this arrangement of payment of interest to NHAI and of not charging interest from JMC Project (India) Limited was prudent commercial decision in the best interest of the business, it did not sustain the order of the assessing officer relying on the decision in the case of **S.A. Builders Ltd. vs. Commissioner of Income-Tax (Appeals) and another** reported in [2007] 288 ITR 1(SC).

5. When this was challenged before the

Tribunal, it concurred with the findings of CIT(Appeals) by holding thus:-

"4. We have considered the rival submissions, perused the records and the judgment cited. From the records, it is evident that the assessee was awarded the contract-work by NHAI and in terms of the agreement the assessee submitted the work to sub-contractor. The AO has observed that the assessee could not establish business expediency by not furnishing the requisite details. However, the Id.CIT(A) has given a finding on fact that the assessee was awarded contract and the money received was mobilization advance was advanced to one of the consortium partners, who was entrusted the work as per another contract, therefore there was business expediency for giving such money to the consortium partners. This finding on fact is unrebutted.

4.1 We have given our thoughtful consideration on the facts and circumstances of the case. The undisputed fact remains that the assessee was awarded the contract-work and the work was further submitted to the sub-contractor and the money given to the sub-contractor was for execution of work. Nothing has been brought on record that money was given for any other purpose. In the absence of same, Id.CIT(A) was justified in holding that the money was advanced for business purpose. Hence, we do not find any infirmity in the order of the CIT(A), the same is upheld. Therefore, ground raised by the Revenue is hereby rejected."

6. We notice that both CIT(Appeals) and the Tribunal have rightly appreciated the facts presented before it, on the basis of the substantiating documents. The mobilization advances had carried with them the interest at the rate of 10% per annum as per the terms and conditions of such contract with NHAI. Whereas

the contract entered into between the Sadbhav Engineering Ltd. and JMC Project (India) Ltd. on account of the business necessity, decision did not carry any interest to be paid by the JMC Project (India) Ltd. to the respondent. Therefore, both the authorities rightly held that this being a business expediency the assessing officer could not have rejected the claim. It would be apt to reproduce the decision of **S.A. Builders Ltd. vs. Commissioner of Income-Tax (Appeals) and another**(supra) at this stage:-

"23. In our opinion, the decisions relating to Section 37 of the Act will also be applicable to Section 36(1)(iii) because in Section 37 also the expression used is "for the purpose of business". It has been consistently held in decisions relating to Section 37 that the expression "for the purpose of business" includes expenditure voluntarily incurred for commercial expediency, and it is immaterial if a third party also benefits thereby.

24. Thus in Atherton vs. British Insulated & Helsby Cables Ltd (1925)10 TC 155 (HL), it was held by the House of Lords that in order to claim a deduction, it is enough to show that the money is expended, not of necessity and with a view to direct and immediate benefit, but voluntarily and on grounds of commercial expediency and in order to indirectly to facilitate the carrying on the business. The above test in Atherton's case [1925] 10 TC 155(HL) has been approved by this Court in several decisions e.g. Eastern Investments Ltd. vs. CIT (1951) 20 ITR 1, CIT vs. Chandulal Keshavlal & Co. (1960) 38 ITR 601 etc.

25. In our opinion, the High Court as well as the Tribunal and other Income Tax authorities should have approached the question of allowability of interest on

the borrowed funds from the above angle. In other words, the High Court and other authorities should have enquired as to whether the interest free loan was given to the sister company (which is a subsidiary of the assessee) as a measure of commercial expediency, and if it was, it should have been allowed.

26. The expression "commercial expediency" is an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation, but yet it is allowable as a business expenditure if it was incurred on grounds of commercial expediency."

We do not see any reason to interfere. No question of law arises."

3. Resultantly, this Tax Appeal is dismissed.

(AKIL KURESHI, J.)

(MS SONIA GOKANI, J.)

SUDHIR