

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3343 OF 2008
(Arising out of S.L.P.(C) No.14531/2007)

Commr. of Income Tax-I, Ahmedabad

...Appellant(s)

Versus

M/s. Ashini Lease Finance P. Ltd.

...Respondent(s)

WITH

CIVIL APPEAL NO.3344 OF 2008
(Arising out of S.L.P.(C) No.19727/2007)

ORDER

None appears for the respondent, though served.

Leave granted.

These Civil Appeals are filed by the Department against the decision of the Division Bench of the Gujarat High Court dated 20th December, 2006 in Tax Appeals No.918/2006 and 919/2006. By the impugned judgment, the High Court held that the facts of the present case were similar to the facts in the case of Akalu Holdings Pvt. Ltd. and Aashini Lease Finance Pvt. Ltd. in which the Tribunal has considered all aspects and has decided the matter in favour of the assessee. Consequently, the Department's appeals stood dismissed by the impugned judgment. Hence, these Civil Appeals.

The short question which arose for consideration before the High Court was: Whether the acquisition of shares by the assessee was with the object of getting control

over Ahmedabad Electricity Company Ltd. (AEC) and, if so, whether interest paid by the assessee to M/s. Torrent Financiers was allowable as expenditure under Section 36(1)(iii) of the Income Tax Act?

In this case, we are concerned with the Assessment Years 1996-97 and 1997-98. The AO found that borrowed funds were invested to acquire control of AEC. Accordingly, he disallowed the interest expenses under Section 36(1)(iii). This was on the footing that assessee had paid interests to Torrent Financiers and Torrent Leasing and Finance Private Limited (sister companies of the assessee). According to the order of assessment, borrowed funds were deployed by the assessee Company during the relevant year in order to purchase equity shares of AEC, which Company is subsequently taken over not by the assessee but by the Torrent Group. During the relevant year, the total investment made by the assessee in the take over and acquisition of business of AEC amounted to only Rs.22,59,969/-. To this extent, there is no difficulty. The problem arises where the AO has detected that after acquiring the shares of AEC Ltd., the assessee herein has sold the shares of AEC at Rs.63,57,925/- and further that subsequently, the said AEC Ltd. has been taken over and acquired by the Torrent Group. The record indicates, prima facie, that the assessee Company had acquired the shares of AEC through finances arranged mainly from Torrent Group (sister companies) along with two other companies only to enable Torrent Group to acquire and take over the business of AEC.

The question, therefore, which arose for consideration before the High Court was: Whether the assessee was entitled to deduction in respect of interests paid by it to the Torrent Group? Prima facie, it appears to us that the High Court has lost sight of

the above facts which, if proved and established, would indicate circular trading entered into solely with the idea of evading tax. This prima facie view is expressed only in support of our present order as relevant aspects have not been considered by the Tribunal and, therefore, the above reasons should not be taken as our conclusion. Therefore, in our view, the High Court had erred in dismissing the appeals on the ground that no substantial question of law arose for determination.

For the aforestated reasons, we set aside the impugned judgment dated 20th December, 2006. We restore Tax Appeals Nos.918/2006 and 919/2006 on to the file of the High Court with a direction to the High Court to dispose of these appeals in accordance with law.

Civil Appeals are, accordingly, allowed with no order as to costs.

.....J.
(S.H. KAPADIA)

.....J.
(B. SUDERSHAN REDDY)

New Delhi,
May 06, 2008.