

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.04.2005

Coram:

The Honourable Mr.MARKANDEY KATJU, CHIEF JUSTICE

and

The Honourable Mr.Justice F.M.IBRAHIM KALIFULLA

Tax Case (Appeal) No. 1 of 2003

M/s.Ashok Leyland Ltd.,
19, Rajaji Salai,
Chennai - 600 001.

... Appellant

vs.

The Asst.Commissioner of Income Tax,
Central Circle II (1),
Chennai - 34.

... Respondent

Appeal filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal "A" Bench dated 29.7.2002 in ITA No.70/Mds/94 for the Assessment year 1990-91 (against IT A.No. 52/93-94, dt. 28.10.93 on the file of the Commissioner of Income Tax (Appeals)I, Madras. 34)

For Appellant Mr.P.P.S.Jandardhana Raja for
Mr.Subbaraya Aiyar

For Respondent Mrs. Pushya Sitaraman
Sr. Standing Counsel

J U D G M E N T

This is an appeal under Section 260-A of the Income Tax Act, 1961 (in short 'the Act') filed on behalf of the assessee.

2. Heard the learned counsel for the assessee and for the department.

3. The appellant company during the Assessment Year 1990-91 purchased certain securities viz., HUDCO Shelter Bonds Series II and III Rural Electrification Corporation Bonds. The appellant company claimed interest earned from these securities as exempt within the meaning of Section 10(15)(iv)(h) of the Act.

4. The assessing officer denied the exemption for part of the interest. The CIT (Appeals) allowed the entire claim of exemption of interest on such bonds. The Tribunal was also inclined to allow the exemption of interest on these bonds, but it held that if these bonds were purchased from the market the ratio laid down by the Supreme Court in *Vijaya Bank v C.I.T.*, (1991) 187 ITR 541 would apply. Hence the Tribunal remanded the matter, and directed the assessing officer to examine this aspect.

5. It was submitted by the learned counsel for the appellant that Section 10(15)(iv)(h) of the Income Tax Act, clearly exempts such interest earned from the bonds issued by any Public Sector Company subject to the condition that the holder of such bonds or debentures, registers his name and the holding with the company, as the Central Government may by notification in the official gazette specifies in this behalf.

6. In this connection, the appellant relied on the notification nos. S.O.258 (E), dated 4th April, 1989 and S.O. 284 (E), dated 17th April, 1989 (published in Vo.178 ITR 4) and submitted that the interest earned from these Public Sector Bonds is exempt from tax under Section 10(15)(iv)(h) of the Act. The notifications provide that the benefit shall be admissible if the holder of such bonds registers his name and holding with the said corporation. Hence, it is submitted by the learned counsel for the assessee that the interest income does not form part of the total income. It was also submitted by the learned counsel for the assessee that the Tribunal was wrong in imposing further conditions which are not contemplated by Section 10(15)(iv)(h) of the Act.

सत्यमेव जयते

6. Notification No.S.O. 258 (E), dated 4th April, 1989 reads as follows: -

" In exercise of the powers conferred by item (h) of sub-clause (iv) of clause (15) of Section 10 of Income-tax Act, 1961 (43 of 1961) the Central Government hereby specifies "10 years-9% (tax-free) Secured Redeemable Non-Convertible HUDCO Shelter Bonds (Series-II)", issued by the Housing and Urban Development Corporation Limited, for the purpose of the said item:

Provided that the benefit under the said item shall be admissible only if the holder of such bonds registers his name and holding with the said Corporation.

(Sd.) Nutan Sharma

Under Secretary to the
Government of India

(No.8315/F.No.328/20/88-WT) "

7. Notification No. S.O. 284 (E), dated 17th April, 1989 reads as follows: -

" In exercise of the powers conferred by item (h) of sub-clause (iv) of clause (15) of Section 10 of Income-tax Act, 1961 (43 of 1961) the Central Government hereby specifies "10 years-9% (tax-free) Secured Redeemable Non-Convertible REC Bonds (19th Series) (Private Placement)" issued by the Rural Electrification Corporation Limited, for the purpose of the said item:

Provided that the benefit under the said item shall be admissible only if the holder of such bonds registers his name and holding with the said Corporation.

(Sd.) Nutan Sharma

Under Secretary to the
Government of India

(No.8336/F.No.328/19/89-WT) "

8. The Tribunal has relied on the decision of the Supreme Court in *Vijaya Bank v C.I.T.* (supra). We have carefully gone through the said judgment, and we find that the said decision has no relevance to the facts of the present case. In *Vijaya Bank v C.I.T.* (supra) the Supreme Court has held that the price paid for purchase of securities was in the nature of a capital outlay, and no part of the said price can be set off as expenditure against the income accruing on those securities. In the present case, the question involved is totally different.

9. Section 10(15)(iv)(h) of the Act states that in computing the total income of the previous year of any person, the following income shall not be included ---

"Interest payable ---

"by any public sector company in respect of such bonds or debentures and subject to such conditions, including the condition that the holder of such bonds or debentures registers his name and the holding with that company, as the

Central Government may, by notification in the Official Gazette, specify in this behalf"

10. The language of Section 10(15)(iv)(h) of the Act is very clear, and hence in our opinion the assessee company is clearly entitled to the benefit of the exemption under the aforesaid provision. We, therefore, cannot understand why the Tribunal has remanded the matter.

11. In paragraph-10 of its order, the Tribunal has observed: -
" But it is not clear from the record whether the bonds were subscribed for or purchased in the market. In the event the bonds are subscribed, then interest earned would be exempted under Section 10(15) of the Act. If the bonds were purchased from the market, then the ratio laid down by the Supreme Court in Vijaya Bank's case (supra) would apply".

12. In our opinion, the distinction drawn by the Tribunal is wholly untenable and irrelevant. All that has to be seen in the present case is whether the assessee is the holder of the bond or debenture and whether the holder of such bond or debenture has got his name registered with the company, and whether the Central Government has issued a notification in the Official Gazette in this behalf. In the present case, there is no dispute that all the conditions mentioned in clause (h) of Section 10(15)(iv) of the Act are satisfied. Hence, the assessee is entitled to the benefit of clause (h).

13. It is well settled that in tax law the principle of strict construction (literal rule of interpretation) applies, and we have to only see the wording of the statute. As observed by Lord Cairns in *Partington v. Attorney General*, (1869) LR 4 HL 100: -

" If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind. On the other hand if the Court seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be"

Hence in interpreting a taxing statute one cannot go by the notion as to what is just and expedient, vide *CIT v. Shahzada Nand*, AIR 1966 SC 1342. In *CIT v. Firm Maur*, AIR 1965 SC 1216, the Supreme Court held that equity is out of place in tax laws. (see also 108 ITR 345 SC).

14. As observed by Rowlatt J in his classic statement in *Cape Brady Syndicate v. IRC*, (1921) 1 KB 64) (cited with approval in AIR 1968 SC 623): -

" In a taxing statute one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

This judgment has been followed by the Supreme Court in AV Fernandez v. State of Kerala, AIR 1957 SC 657 and other decisions. As observed by the Supreme Court if the words of a taxing statute fail, so must the tax vide ITO v. Nadar, AIR 1968 SC 623 and I.T. Commr. v. Elphinstone & W. Mills, 1960 SC 1016.

15. In Innamuri Gopalan v. State of AP, 1964 SCR (2) 888, the exemption was denied to the assessee on the ground that the intention of the notification was to avoid double taxation, and as this was not a case of double taxation no exemption could be granted. The Supreme Court held that on the plain language of the notification the assessee was entitled to exemption, and since the intention was not reflected in plain words, it could not be taken into consideration.

16. Keeping the above principles of Interpretation of taxing statutes in mind, it is clear that on a plain reading of clause (h) of Section 10(15)(iv) of the Act, the assessee is entitled to the benefit of the said provision as his case clearly falls within the plain words used in clause (h).

17. For the reasons given above, this appeal is allowed. The impugned judgment of the Tribunal is set aside, and the order of the CIT (Appeals) is restored.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

pv/

Copy to:

1. The Assistant Registrar,
Income Tax Appellate Tribunal, 2nd Floor,
Rajaji Bhavan, Besant Nagar, Chennai. 20

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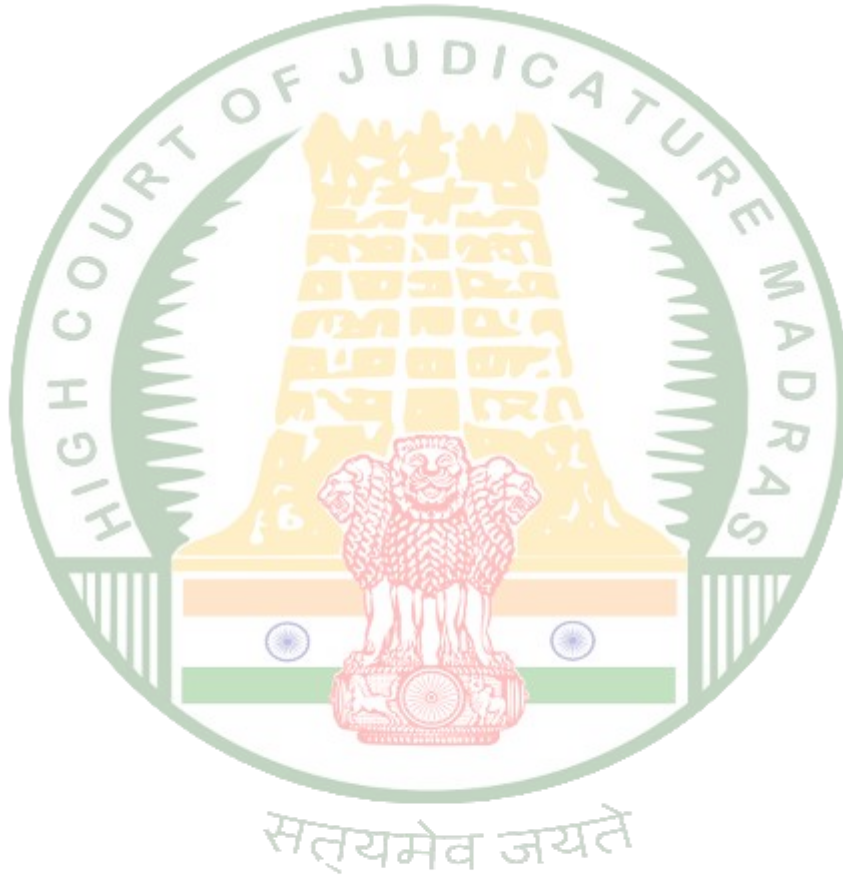
2. The Asst.Commissioner of Income Tax,
Central Circle II (1),
Chennai - 34.

3. The Commissioner of Income Tax,
(Appeals) I, Chennai. 34

1 cc to Mrs.Pushya Sitaraman, Advocate, Sr. 19759

T.C. (Appeal) No.1 of 2003

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