IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

I.T. Appeal No. 3 of 2000

Date of decision: 28.5.2008

Commissioner of Income tax **Appellant**
Vs.

M/s Winsome Dyeing & Processing Ltd. **Respondent**

Coram:

The Hon'ble Mr. Justice R.B.Misra, Judge.

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting?[1]

For the Appellant: **Mr.Vinay Kuthiala, Advocate**

For the Respondent : **Mr. R.L.Sood, Senior Advocate, with**
Mr. Arjun Lal, Advocate

Per R.B.Misra, J. (Oral)

Heard Mr. Vinay Kuthiala, learned counsel for the appellant. Heard Mr. R.L.Sood, learned Senior Advocate, for the respondent.

2. The present appeal under Section 260-A of the Income Tax Act, 1961 (in short the Act) has been preferred against the order dated 29th October, 1999 passed by the Income Tax Appellate Tribunal, Chandigarh (in short ITAT) in ITA No. 999/Chandi/92.

3. It appears the assessee filed return for the assessment year 1989-90 which was assessed on 24.8.1999 by the Income tax Officer thereby assessing interest on short term

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[1] Whether reporter of local papers are allowed to see the judgment ? No..

deposits received by the assessee as income from other sources and assessed the assessment under Section 56 of the Act. As such the interest of Rs. 3,09,586/- received during the period was assessed to tax.

4. Assessee had claimed that no business activity was being done by him and only construction work and installation of machinery was done during the assessment year in question and all the expenses incurred on it has been capitalized. It appears during the year under consideration the assessee company has received interest on short term deposits and the assessee company has received a loan of Rs. 49 lacs from the Industrial Financial Corporation of India. A part of the loan was utilized for the capital investment and since balance money not required for business at the relevant time, was kept in short term deposit with M/s Jutex International Ltd. whereon the assessee received interest on these deposits. The assessee was asked to explain why the interest earned on the short term deposit should not be assessed as income under the head “Income from other sources” under Section 56 of the Act. In response the assessee submitted that the intention of making the short term loan was to reduce the cost of capital assets acquired by the company for its business and the interest earned on short term deposits does not constitute income of the company.

5. Appeal IT/353/12/1990-91 preferred against the order dated 24.8.1990 for the assessment year 1989-90 was decided in favour of the assessee on 17.2.1992 by holding that the income assessed by the Assessing Officer is reduced to nil. The Commissioner, Income Tax (Appeals) preferred an appeal being I.T.A. No. 999/Chandi/92 against the above order of the Commissioner which too was dismissed affirming the verdict of the Commissioner, Income tax (Appeals) indicating that the assessee had correctly made the assessment and the amount of Rs. 3,09,586/- received as interest could not be treated as income from other sources.

6. In the facts and circumstances the appeal under Section 260-A of the 'Act' has been preferred by the Commissioner, Income tax (Appeals), Shimla on the following substantial question of law:-

> "Whether on the facts and in the circumstances of the case, the ITAT was right in holding that the assessee had correctly claimed adjustment and that amount of Rs. 309586/- received as interest could not be treated as income from other sources under Section 56 of the I.T. Act?"

7. During the course of arguments, it has been submitted that the issue in question could be dealt with in view of the decision of Supreme Court in **Tuticorin Alkali Chemicals & Fertilizers Ltd., Madras Vs. Commissioner of Income Tax, Madras (1997) 6 SCC 117** followed by Supreme

Court in its subsequent decision in **Commissioner of Income Tax, Trivandrum Vs. Autokast Ltd. (2002) 9 SCC 607,** wherein the Supreme Court has held that in the matter of money borrowed for plant and machinery purchase put in short-term deposit till consumed, interest accrued on such short term deposits shall have to be assessed to tax as income from other sources and the same cannot be set off against actual cost of the plant and machinery has to be in view of the provisions of Section 56 of the Act and the same cannot be set off against actual cost of plant and machinery.

8. According to Mr. Vinay Kuthaiala, learned counsel for the appellant, in view of such settled legal position of law and in view of the facts and circumstances that the appellant has indicated that all the expenses incurred on the construction of work and installation of machinery have been capitalized and there is no scope of claim for exemption or rebate afresh to be made before the assessing officer. In these circumstances and in view of the decision of Supreme Court in **Alkali Chemicals & Fertilizers Ltd.** case (supra) and in **Autokast Ltd.** case (supra), substantial question of law has to be dealt with.

9. On the other hand, Mr. R.L.Sood, learned Senior Advocate, appearing on behalf of the respondent has urged that while managing the affairs of the business of the respondent organization, many unexplained expenditure verifiable from the records may be highlighted for which the assessing authority

may make verification and may pass a fresh order evaluating the benefit of those claims to be brought by the respondent afresh.

10. We have heard learned counsel for the parties and have perused the documents.

11. In view of the settled position of law, we are of the considered view that the submissions of learned counsel for the respondent are unacceptable as the deposits on short term basis by the assessee for the assessment year 1989-90 to the tune of Rs. 3,09,586/- received by the assessee during the period is liable to be taxed under Section 56 of the Act. In view of these observations the substantial question of law is answered accordingly and the appeal is allowed.

(R. B. Misra), J.

May 28, 2008(K) (Sanjay Karol), J.