

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No.559 of 2009

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COMMISSIONER OF INCOME TAX-I - Appellant(s)

Versus

ADITYA MEDISALES LTD - Opponent(s)

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Appearance :

MRS MAUNA M BHATT for Appellant(s) : 1,

None for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 04/05/2010

ORAL ORDER

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1. In this appeal under Section 260(A) of the Income Tax-Act, 1961 (the Act)

the appellant-revenue has proposed the following question:

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in confirming the order of the CIT(A) deleting the disallowance made on account of excess interest payment for Rs.56,63,131/- in view of section 40A(2)(a) of the Act?

2. The Assessment Year is 1997-98 and the relevant accounting period is the previous year 31.03.1997. The Assessing Officer found that the assessee company had paid interest @ 18% to 20% p.a. to depositors, ICDs and financial institutions while interest on overdue balance was paid @ 24% to Sun Pharmaceuticals Industries Limited. The Assessing Officer considered the interest paid @ 24% to Sun Pharmaceuticals Industries Limited as excessive compared to interest paid @ 18% to @20% to other parties. He held that the rate of interest @ 20% was reasonable and accordingly disallowed 4% as excessive and unreasonable by applying Section 40A(2)(a) of the Act and made addition of Rs.56,63,331/-. In appeal by the assessee, Commissioner (Appeals) deleted the said addition holding that the Assessing Officer was not justified in invoking provisions of Section 40A(2)(a) of the Act. Revenue carried the matter in appeal before the Tribunal, but failed.
3. Mrs.M.M.Bhatt, learned Senior Standing Counsel for the appellant has submitted that both, Commissioner (Appeals) as well as the Tribunal were not justified in deleting the addition inasmuch as no evidence had been produced to substantiate rate of interest @ 24% p.a.

4. A perusal of the order of Commissioner (Appeals) shows that Commissioner (Appeals) has found substance in the contention raised on behalf of the assessee that the provisions of Section 40A(2) of the Act were not applicable to it without establishing a direct relationship between the assessee and the payee company as defined in Section 40A(2)(b) of the Act. Commissioner (Appeals) was further of the view that, the interest had been paid looking to the business needs of the Company and that too for raising unsecured loans which were not easily available in the market to the assessee.
5. The Tribunal in its impugned order has recorded that it is not clear from the record as to whether the contention as to the applicability of Section 40A(2)(b) of the Act was raised before the Assessing Officer, and accordingly proceeded in the matter by assuming that the provisions of Section 40A(2)(a) of the Act could be applied in the present case. The Tribunal has recorded that the Assessing Officer has inferred that the rate of 24% p.a. was excessive as the assessee had paid interest at rates varying from 18% to 20% p.a. on its other borrowings, that is, the deposits from public and loans from financial institutions. It was contended on behalf of the assessee that the market rate for capital during the relevant period stood at 24% to 30% p.a. The Tribunal was of the view that even though no basis or material to indicate the said market rates had been laid by the assessee, normally if the interest rates from organized sources are in the range of

20% p.a., the interest rates from the general market would only be higher.

According to the Tribunal even if the assessee's claim is discounted, the rate of interest at 24% p.a., which is the rate at which interest is paid by the assessee, is not beyond conception. *The Tribunal had also found that the onus for the application of Section 40A(2)(a) of the Act is on the revenue, which was not discharged by it.*

6. *Thus both, Commissioner (Appeals) as well as the Tribunal have upon appreciation of the evidence on record found that the revenue has not been able to make out any case for applying the provisions of section 40A(2)(a); and that interest on unsecured borrowings is always higher than the rate of interest paid to the banks or financial institutions from where the loans raised are secured loans, and have accordingly accepted interest paid to Sun Pharmaceuticals at the rate of 24% p.a. to be reasonable. In the light of the concurrent findings of fact recorded by Commissioner (Appeals) as well as the Tribunal, and considering the fact that the findings and conclusions arrived at by the Tribunal are based on the evidence on record as well as normal commercial practices, it cannot be stated that the impugned order suffers from any legal infirmity so as to warrant interference.*

7. In absence of any question of law, much less substantial question of law,
the appeal is dismissed.

Sd/-

[D. A. MEHTA, J]

Sd/-

[H.N.DEVANI, J]