Commission for loan guarantee is revenue exp. even if loan is taken to acquire capital asset

Summary – The High Court of Punjab & Haryana in a recent case of Haryana State Road & Bridges Development Corporation Ltd., (the Assessee) held that where loans were taken for acquisition of capital assets, commission paid to guarantor would be revenue expenditure allowable under section 37(1)

To determine whether requisite amount of tax was deducted at source and paid over to government treasury or not in accordance with law, Tribunal should admit requisite challans sought to be submitted by assessee

Facts

- The assessee, Haryana State Road and Bridge development corporation Ltd. claimed deduction under section 37 being the commission paid to the state of Haryana in respect of guarantee issued in favour of Haryana Urban development Corporation limited (HUDCO) on the assessee's request. The guarantee was issued in respect of loans taken for acquiring capital assets.
- The Assessing Officer disallowed the expenditure treating the same as capital expenditure.
- On appeal, the Commissioner (Appeals) and the Tribunal took stand in favour of revenue.
- On further appeal to the High Court:

Held

Guarantee Commission

- The question that falls for consideration is whether the commission paid in respect of a guarantee is on revenue account or on capital account. This question is to be answered in favour of the assessee in view of a judgment of the Supreme Court upholding the judgment of the Madras High Court on this issue.
- The Supreme Court in *CIT* v. *Sivakami Mills Ltd.* [1997] 227 ITR 465/95 Taxman 73 held that the guarantee commission paid by an assessee is a revenue expense and, therefore, allowable as a deduction in computing the total income. It is important to note that even in that case, the Madras High Court in *Sivakami Mills Ltd.* v. *CIT* [1979] 120 ITR 211 came to the conclusion that the purchase of machinery was a capital expenditure, but the guarantee commission stands on a different footing. It is assumed that in the instant case before us also the guarantee was issued in respect of loans taken for acquiring capital assets. In view of the judgment of the Supreme Court, it would make no difference as far as the guarantee commission is concerned. The guarantee was issued by the State of Haryana at the assessee's request in favour of HUDCO.

Disallowance for non-deduction of TDS

- If indeed the assessee was bound to deduct tax at source and did not do so, the assessment order disallowing the expenditure relating to the relevant payments must be upheld.
- The assessee, however, alleges to have discovered later that it had in fact deducted the tax at source and paid the same to the government treasury. The assessee relies upon a challan in that regard. The assessee sought to produce the same before the Tribunal, but the Tribunal did not permit it to do so. This was a fit case for the Tribunal to have exercised its powers under Rule 29 of the Appellate Tribunal Rules, 1963 requiring the production of the challan evidencing the payment of the tax deducted at source in the government treasury. All that was required was to direct the authorities to examine whether the challan was genuine and whether the amount was paid into the government treasury or not in accordance with law. The ends of justice certainly required the same. Even if the assessee had contended before the Assessing Officer and the Commissioner (Appeals) that the amount was not payable, it would make no difference, if, in fact, the amount had been paid.
- In these circumstances, the question is decided by quashing the order of the Tribunal refusing to allow the appellant to adduce additional evidence. On this issue, however, the Assessing Officer shall examine the challan and determine whether the requisite amount of tax was deducted at source and paid over to the government treasury or not in accordance with law. If the same has been done, the assessee shall be entitled to the deductions. If not, the disallowance shall stand.