

No interest on loan could be added to income if interest was waived off on ground of commercial expediency

Summary – The High Court of Calcutta in a recent case of Shivlaxmi Exports Ltd., (the Assessee) held that where on two borrowers' inability to pay interest, Board resolution was passed to waive interest so as to ensure realisation of principal amount, and thereafter, no interest was credited in books, as there was no linkage or nexus between assessee and these two borrower, no interest income would be said to have accrued to assessee

Facts

- The assessee-company was following mercantile system of accounting. It advanced loan to two borrower companies during the financial year 1985-86. These borrowers expressed their inability to pay interest. On the request made by the borrowers for not charging any interest, the same was acceded to by the assessee pursuant to a decision taken by passing the Board resolution on the ground of commercial expediency to recover principal amount. The assessee did not credit any interest in respect of these two borrowers in its books. For the earlier assessment years, no question was raised as regards the waiver of interest in relation to these borrowers.
- However, during the current year, the Assessing Officer directed addition to income of the assessee on account of interest income from the borrowers.
- On appeal, the Commissioner (Appeals) confirmed the addition on the ground that the assessee was following mercantile system of accounting and, therefore, interest amount on the basis of prevailing market rate was rightly added on due basis.
- On second appeal, the Tribunal found the fact that the assessee continued to receive back the principal amount from the said company. For waiving the interest, no resolution was passed by the Board of Directors. It was also revealed from the record that the said debt was not a bad-debt as time-to-time payment was received by the assessee-company. It was the business of the assessee to have the income from interest. The Tribunal upheld the order of the Commissioner (Appeals).
- The rectification application was rejected merely stating that the Tribunal *suo motu* had not imported this observation.
- On appeal before the High Court:

Held

- From the order of the Tribunal assailed and the order passed by the Tribunal in the rectification proceeding, it becomes apparent that the plea of the assessee was primarily rejected on the ground that it maintained mercantile system of accounting, the debts were not declared as bad debts and the assessee continued to receive back the principal sums from the borrowers.
- The assessee in this appeal had taken resolution prior to the assessment year under consideration. There is no dispute that it was a decision of the assessee based on commercial consideration.

Further, the records of this appeal do not show any linkage or nexus between the assessee and its two borrowers.

- Thus, the interest income could not said to have been accrued for the appellant for the assessment year in the background of the resolutions taken for waiver of interest.
- Accordingly, the questions are answered in favour of the assessee.