

## **Sum paid to retain shareholding in a co. was an investment eligible for deduction under sec. 57**

**Summary – The High Court of Bombay in a recent case of Ballarpur Industries Ltd., New Delhi., (the Assessee) held that where assessee paid amount in nature of investment and continued to retain shares in a company so as to earn dividend/interest income, said amount was admissible under section 57**

### **Facts**

- The assessee-company along with APIDC and GRH had jointly promoted APRL. The shareholding in APRL was distributed amongst the promoters in terms of Memorandum of Understanding (MoU). The MoU further provided a right to GRH to acquire from assessee 1/3rd of its total shareholding in APRL over the period of 15 years.
- In 1991, GRH filed a suit in for Specific Performance of the MoU so as to acquire further 1/3rd shareholding of the assessee in APRL. The suit was compromised in the previous year relevant to the assessment year and the assessee paid an amount of Rs. 3.25 Crores to GRH so as to continue to retain its shares in APRL. The assessee claimed the entire amount of Rs. 3.25 crores as revenue expenditure on the ground that it was incurred for the purposes of carrying on its business.
- The Assessing Officer denied the claim of the assessee on the ground that the expenditure was incurred to acquire an interest and/or control over APRL. Thus, not a revenue expenditure incurred for carrying on assessee's business.
- On appeal before the Commissioner (Appeals), the assessee had made an alternate claim for deduction of Rs. 3.25 crores under section 57. The Commissioner (Appeals) held that the deduction as claimed was a revenue expenditure inasmuch as he held that the same would be allowable under section 57 provided the income by way of interest/dividend was earned on the expenditure incurred during the subject assessment year. However, on facts, the Commissioner (Appeals) found that there was no income/interest earned during the subject assessment year. Therefore, the benefit of deduction under section 57(iii) could not be extended to the assessee.
- On appeal, the Tribunal recorded that the only reason for disallowing the expenditure for subject assessment year by the Commissioner (Appeals) as deduction under section 57(iii) was that the expense of Rs. 3.25 crores had not yielded any income during the subject assessment year. It held that it was not necessary so long as the amount was expended wholly and exclusively for earning income, whether or not the income had in fact been earned. On the above facts, the amount in question was in the nature of investment by which it continued to retain 30.75 per cent shares in APRL to earn dividend income. Therefore, the appeal of the assessee was allowed.
- On the revenue's appeal to the High Court:

### **Held**

- The revenue has accepted the finding of the Commissioner (Appeals) to the effect that the expenditure of Rs. 3.25 Crores paid to GRH would be allowable as a deduction under section 57(iii). This itself can be allowed provided it is not capital expenditure. In the present case, the assessee has been denied the deduction under section 57(iii) by the Commissioner (Appeals) only because of absence of income by way of dividend/interest in the subject assessment year. This connection/nexus between allowing of deduction under section 57(iii) only upon earning of income in the subject assessment year has been negated by the Apex Court in *CIT v. Rajendra Prasad* [1978] 115 ITR 519. In fact, the only requirement is that the expenditure is with the object of earning income and not dependent upon actual earning of income in fact. In this case, the impugned Order of the Tribunal has recorded a finding that the amount of Rs. 3.25 crores were paid to GRH by the assessee only with a view to safeguard its investment in APRL so as to earn dividend/interest income.
- Thus, on the present facts, no interference with the impugned order is called for as it merely follows the Apex Court decision in *Rajendra Prasad Moody (supra)*.
- Moreover, it may be pointed out that the question as framed on behalf of the revenue seeks to deny the assessee the benefit of section 57(iii) on the ground that it is in the nature of capital expenditure as it was expended for enlarging control and management of APRL. This finding of capital expenditure by the Assessing Officer was negated by the Commissioner (Appeals), who held it was allowable as a deduction under section 57(iii), only subject to earning of income. Section 57(iii) itself excludes expenditure of capital nature. However, the revenue accepted the above finding of the Commissioner (Appeals), as no appeal on this aspect was filed to the Tribunal. Therefore, the question, as formulated, does not arise from the impugned Order of the Tribunal.