IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 310 of 2010 (O&M)
Date of decision: 23.9.2015

M/s Paliwal Industries Pvt. Limited

……Appellant

Commissioner of Income Tax, Aayakar Bhawan, Karnal, Haryana.

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. S.K.Mukhi, Advocate for the appellant-assessee.

Mr. Yogesh Putney, Advocate for the respondent-revenue.

Ajay Kumar Mittal,J.

1. The appellant-assessee has filed this appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 14.12.2009, Annexure A.3 passed by the Income Tax Appellate Tribunal Delhi Bench 'F' New Delhi (in short, "the Tribunal") in ITA No.1771(DEL)/2009 for the assessment year 2006-07, claiming following substantial questions of law:-

> A. Whether, on the facts and circumstances of the case, the Tribunal was justified in concurring with the orders of authorities below in treating the advances for purchase of raw material from two concerns being trade creditors as interest free

loan without any documentary evidence on record to support the contentions of Revenue and thus against the principles of commercial expediency as so held by the Hon'ble Supreme Court of India in the case of ***S.A.Builders vs. CIT*** 288 ITR 1 (SC)?.

B. Whether the order of the Tribunal is perverse and against the provisions of law?

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant-assessee is a company engaged in the business of manufacturing of cotton polyester made ups at Panipat. It filed its return of income for the assessment year 2006-07 declaring income at ₹ 87,22,254/- on 30.11.2006. The case was processed under Section 143(1) of the Act and on 22.10.2007, notice was issued to the appellant under section 143(2) of the Act. The appellant appeared before the Assessing Officer and filed reply alongwith documents. The Assessing Officer observed that the appellant had given interest free advances to the following concerns:-

1. M/s Chirag Spinnng Mills	₹ 15,00,000/-
2. M/s Dina Nath and Sons	₹ 2,67,359/-

The advances were made for commercial expediency as the appellant had to buy the raw material as per particular specifications that raw material was not readily available in the market to maintain its position in the competitive market. There were opening balances which stood accepted in earlier years as trade transactions. The Assessing Officer held that the amount of interest paid by the assessee company on the loans raised by it to the extent the amounts were advanced interest free basis to the two concerns amounting to ₹ 2,11,512/- was disallowed. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. It was pleaded that the appellant never advanced any loan but a sum of ₹ 2,69,569.80 to M/s Dina Nath and Sons in Financial Year 2004-05 (Assessment year 2005-06) was on account of earlier transactions while even for the year under consideration it received goods on 23.8.2005 wherein a sum of ₹ 2,27,590/- was paid on 9.9.2005 for purchase of goods whereas the earlier amount was outstanding. However, for the year under consideration i.e. Assessment year 2006-07, the CIT(A) by concurring with the order of the Assessing Officer, dismissed the appeal of the appellant vide order dated 18.3.2009, Annexure A.2. The assessee went in appeal before the Tribunal. Vide order dated 14.12.2009, Annexure A.3, the Tribunal dismissed the appeal. Hence the instant appeal by the appellant-assessee.

3. We have heard learned counsel for the parties.

4. Learned counsel for the appellant-assessee submitted that similar matter was considered by the then Assessing Officer for the assessment year 2005-06 where there was no disallowance made under section 36(1)(iii) of the Act on account of advances given to M/s Chirag spinning Mills Limited, Panipat and M/s Dina Nath & Sons which was also without charging any interest from them.

5. On the other hand, learned counsel for the revenue supported the order passed by the Assessing Officer which was affirmed by the CIT(A) and upheld by the Tribunal.

6. During the assessment proceedings, it was found that the assessee company had given interest free advances to M/s Chirag spinning Mills and M/s Dina Nath and Sons. No interest had been charged from the

said concerns on the advances made to them. The assessee was asked to explain why the proportionate interest should not be disallowed out of the bank interest claimed on account of interest free advance as per the provisions of section 36(1)(iii) of the Act. The assessee explained that it had made trade advance of ₹ 15 lacs to M/s Chirag Spinning mills which had earlier supplied yarn to it in the previous year. This firm was not related to any director of the company. Further, the advance money given to M/s Dina Nath & Sons for purchase of yarn was a trade advance and was not related to the assessee company or its directors at all. After considering the matter, the Assessing officer disallowed the amount of interest paid by the assessee on the loan raised by it to the extent the amount was advanced on interest free basis to the above said two firms which came to ₹ 2,11,512/-. The CIT (A) affirmed the said findings which read thus:-

> "9. I have considered the facts of the case and the submissions of the assessee. From the submissions of the assessee and from the copy of account, it is clear that the advance of ₹ 15,00,000/- was given to M/s Chirag spinning Mills in F.Y.2004-05 or earlier and therefore, in F.Y 2005-06, it is shown an opening balance only and the same remained outstanding for the whole year. The assessee has not filed any evidence to show that the advance was made for purchase of yarn or for any other business transaction. Generally the business practice is that first the goods to be purchased are selected and if necessary the samples are approved and only then such huge advances are given and that too with an agreement or other evidence, whereas, there is no such thing in the case of the assessee, hence the claim that the advance was given for yarn purchase is merely an after thought and therefore, it has not resulted in any business transaction also. Not even any

communication/correspondence suggesting that it was a advance for business purposes has been filed, therefore, it is clearly established that the advance was not for business purposes. Similarly, in the case of Dina Nath & Sons, the opening balance of ₹ 2,69,659/- was existing and a purchase of only ₹ 2,29,890/- was made against which another payment of ₹ 2,27,590/- was made and therefore balance of ₹ 2,67,359/- remained outstanding which is almost the same amount as was the opening balance, whereas the assessee has not explained any reason for keeping such an outstanding balance and why was the purchase not adjusted out of the opening balance, therefore, the advance to the extent of ₹ 2,67,359/- is not for business purposes, hence it is beyond doubt that both the advances outstanding, in the case of M/s Chirag Spinning Mills and Dina Nath & Sons, as considered by the AO were without business purposes."

7. While upholding the findings recorded by the CIT(A), the Tribunal held as under:-

"6. We have heard both the counsel and perused the records. Learned counsel of the assessee reiterated that these were trade advances and hence no disallowance of interest is called for. In this regard, learned counsel referred the decision of the Hon'ble Apex court in the case of Munjal Sales Corporation vs. CIT, 298 ITR 298, SA Builders vs. CIT 288, ITR 1 and Hon'ble Madras High Court in the case of CIT vs. Savera Hotel CTR 148 ITR 585. Learned counsel also claimed that above parties were not related to the assessee.

6.1 Learned DR on the other hand submitted that it has been a categorical finding in orders of the authorities below that the parties are related and assessee has incurred interest in obtaining the funds and at the same time has given interest free advance to these concerns. Learned DR further pointed out that the decisions relied upon by the learned counsel of the assessee has been duly dealt with in the learned CIT(A)'s order.

7. We have carefully considered the submissions and perused the records. As regards the advance to M/s Chirag Spinning Mills, the advance of ₹ 15 lacs is appearing as opening balance. Learned counsel for the assessee was not in a position to provide any document to show that the same advance was actually trade advance in nature. As regards the present status of the advance, learned counsel claimed that the same is still outstanding and some dispute has risen in this regard.

7.1 As regards the advance to Dina Nath and Sons, we find that an amount almost equal to opening balance has remained outstanding at the end of the year. In this connection, also no evidence has been produced that advance was meant for the business purposes. As regards the present status of this advance, learned counsel submitted that the same is still outstanding and some dispute has arisen.

8. Upon careful consideration, we find that the assessee has failed to produce any document to support the claim that these advances are in fact trade advances. Admittedly, assessee has obtained interest bearing funds. Under such circumstances, when no evidence is being submitted regarding the purpose for which the advance was given and the advances are lying for the long period, the disallowance of interest in this regard cannot be said to be unjustified."

8. The Assessing Officer, CIT(A) and the Tribunal had concurrently concluded that the advance to M/s Chirag Spinning Mills amounting to ₹ 15 lacs appearing as opening balance had remained outstanding at the end of the year. The assessee had failed to show that the advance was made for purchase of yarn or for any other business transaction. Similarly, in the case of Dina Nath & Sons, there was opening balance of ₹ 2,69,659/- whereas against another purchase of ₹ 2,29,890/-,

the assessee had made payment of ₹ 2,27,590/- retaining outstanding balance of ₹ 2,67,359/-. It was also held not to be for business purposes as the assessee had failed to explain why the purchase made during the year was not adjusted out of the said amount. In the light of the concurrent findings of fact recorded by the Assessing Officer, CIT(A) and the Tribunal, the assessee cannot claim any benefit by urging that no addition under similar circumstances was made by the then Assessing Officer for the assessment year 2005-06, as each year is independent and such addition depends upon facts and circumstances existing at the relevant time.

9. The findings recorded are pure findings of fact which have not been shown to be illegal or perverse in any manner warranting interference by this Court. Thus, the substantial questions of law are answered against the assessee. Accordingly the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

September 23,2015 **(Ramendra Jain)**
'gs' **Judge**