IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 268 of 2011 (O&M)

Date of Decision: 5.5.2016

The Commissioner of Income Tax-III, Ludhiana
....Appellant.

Versus

M/s Oswal Knit India, Ludhiana

...Respondent.

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

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE SHEKHER DHAWAN.

PRESENT: Mr. Rajesh Katoch, Advocate for the appellant.

None for the respondent.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of two appeals bearing ITA Nos. 268 and 269 of 2011 as according to learned counsel for the revenue, identical issue is involved therein. For brevity, the facts are being extracted from ITA No. 268 of 2011.

2. ITA No. 268 of 2011 has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 30.11.2010 (Annexure-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench “B”, Chandigarh (hereinafter referred to as “the Tribunal”) in ITA No. 1043/CHD/2010, for the

assessment year 2005-06, claiming the following substantial question of law:-

> Whether on the facts and in the circumstances of the case, the Hon'ble ITAT is right in upholding the order of CIT(A) dated 18.05.2010, thereby deleting the addition of ₹ 56,48,840/- made by the Assessing Officer on account of disallowance of interest relatable to investment in capital-work-in-progress?

3. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee derives income from manufacturing of Hosiery garments and filed its return of income on 31.10.2005 for the assessment year 2005-06 declaring 'nil' income. However, the tax was paid by the assessee under the MAT on book profits of ₹ 24,93,327/- under Section 115JB of the Act. The said return was processed under Section 143(1) of the Act at deemed income. The assessee filed revised return on 8.1.2007 at 'nil' income. The assessment was completed under Section 143(3) of the Act by the Assessing Officer vide order dated 24.12.2007 (Annexure-1) where the Assessing Officer had made the following disallowances:-

a) disallowance of depreciation on rented property = ₹ 20,592/-.

b) disallowance out of staff welfare expenses = ₹ 50,000/-.

c) disallowance of interest on capital work in progress = ₹ 56,48,840/-.

d) disallowance of prior period expenditure = ₹ 72,302/-.

After adjusting the brought forward business loss for the assessment year 1999-2000 and brought forward depreciation for assessment years 1997-98, 1998-99 and 1999-2000, the income was assessed at 'nil'.

4. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"] challenging the aforesaid additions except addition on account of staff welfare expenses. The CIT(A) vide order dated 18.5.2010 (Annexure-2) partly allowed the appeal and deleted the addition made on account of disallowance of interest on capital work in progress. Thereafter, the revenue filed two appeals against the separate orders dated 18.5.2010 (Annexure-2) and dated 27.6.2010 for the assessment years 2005-06 and 2006-07 before the Tribunal. The Tribunal vide order dated 30.11.2010 (Annexure-3) upheld the order of the CIT(A) and dismissed the appeals. Hence, the present appeals by the revenue.

5. We have heard learned counsel for the revenue.

6. The primary issue that arises for consideration in this appeal is whether the Tribunal was right in upholding the order of the CIT(A) thereby deleting the addition of ₹ 56,48,840/- made by the Assessing Officer on account of disallowance of interest relatable to investment in capital work in progress.

7. Under the proviso to Section 36(1)(iii) of the Act inserted by Finance Act, 2003 w.e.f. 2004-05, it is provided that such amount of interest paid in respect of capital borrowed for acquisition of assets for the period beginning from the date on which the said capital was borrowed for the acquisition of assets till the date the same are first put to use, such interest is required to be disallowed as deduction. Examining the factual matrix herein, the total work in progress as on

31.3.2005 was ₹ 364.44 lacs which comprised of ₹ 331.68 lacs as the opening balance in the account and ₹ 32.76 lacs was added during the year. There was no loan which was outstanding as on 31.3.2004 and 31.3.2005 and none of the interest bearing funds were utilized for the investment in the said opening work in progress. The similar issue of disallowance of interest on account of investment in the capital work in progress had come before the Tribunal in assessee's own case relating to assessment year 2004-05 and the Tribunal upholding the order of CIT (A) held that no interest bearing capital was invested in the aforesaid capital work in progress, which is opening balance for the year under consideration. In view thereof, the Tribunal upheld the order of CIT(A) by recording that there is no merit in disallowing the interest attributable to the opening capital work in progress of ₹ 331.68 lacs. Further, the Tribunal also recorded that the assessee during the year had made an addition of ₹ 36.27 lacs to the said capital work in progress and claimed not to have borrowed any fresh loan during the relevant period. Nothing was produced by the revenue to show to the contrary. Thus, the deletion of addition of ₹ 56,48,840/- by the CIT(A) was upheld by the Tribunal. The relevant findings recorded by the Tribunal read thus:-

> "We have heard the rival contentions and perused the records. Under the provisions of proviso to Section 36(1)(iii) of the Income Tax Act inserted by Finance Act, 2003 w.e.f. 2004-05, it is provided that such amount of interest paid in respect of capital borrowed for acquisition of assets for the period from date on which the said capital was borrowed for the acquisition of assets till the date the same are put to

use, such interest is required to disallowed prior to making any disallowance under the aforesaid provisions of the Income Tax Act. The requirement is to establish that certain bearing borrowed capital was utilized by the assessee for the acquisition of such assets. In the facts of the present case, the total work in progress as on 31.3.2005 was ₹ 364.44 lacs. A sum of ₹ 331.68 lacs was the opening balance in the account and ₹ 32.76 lacs was added during the year. The claim of the assessee before us was that the loan, if any, was repaid in the earlier year and no loan was outstanding as on 31.3.2004 and 31.3.2005. It was further pointed out that none of the interest bearing funds were utilized for the investment in the said opening work in progress. We find that similar issue of disallowance of interest on account of investment in the capital work in progress arose before the Tribunal in assessee's own case relating to assessment year 2004-05. The Tribunal upholding the order of CIT(A) dismissed the appeal filed by the revenue holding that no interest bearing capital was invested in the aforesaid capital work in progress, which is opening balance for the year under consideration. In view of the ratio laid down by the Tribunal in assessee's own case relating to assessment year 2004-05 in ITA No. 965/Chd/2009 vide order dated 18.1.2010, we uphold the order of

CIT(A) that there is no merit in disallowing the interest attributable to the opening capital work in progress of ₹ 331.68 lacs.

6. The assessee during the year had made an addition of ₹ 36.27 lacs to the said capital work in progress and claimed not to have borrowed any fresh loan during the relevant period. The Revenue had failed to bring on record any evidence to the contrary and in view thereof, we find no merit in disallowing the interest attributable to the investment made in the capital work in progress at ₹ 32.76 lacs during the year. We uphold the order of CIT(A) in this regard.”

8. In view of the above, there is no error or perversity could be pointed out in the approach of the Tribunal warranting interference by this Court. Consequently, the substantial question of law is answered accordingly. Finding no merit in the appeals, the same are hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

May 5, 2016
gbs

(SHEKHER DHAWAN)
JUDGE