IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.A. No.56 of 2016
Reserved on: 07.09.2016
Pronounced on: 23.12.2016

M/s Mobility Solutions Limited, Chandigarh

....Appellant

versus

The Assistant Commissioner of Income Tax, Chandigarh

....Respondent

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK SIBAL

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Present:- Mr. Nitin Kaushal, Advocate for the appellant.

Mrs. Urvashi Dhugga, Senior Standing counsel for the respondent.

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DEEPAK SIBAL, J.

Invoking the provisions of Section 260-A of the Income Tax Act, 1961 (for short 'the Act'), the assessee has filed the present appeal to challenge therein the order of the Income Tax Appellate Tribunal, Chandigarh, Bench 'A', Chandigarh (for short 'the Tribunal') which confirmed the order of the Commissioner of Income Tax (Appeals), Chandigarh [for short 'the CIT (A)'].

The appeal which pertains to the Assessment Year 2009-10 seeks to raise therein the following substantial questions of law:-

> *"(i) Whether the Ld. Tribunal has erred in law and fact by failing to appreciate that the funds were given to the sister concern due to commercial*

expediency?

(ii) Whether the Ld. Tribunal has erred in law in not appreciating the fact that there was no extension in existing business and the addition was made to the existing assets for increasing the efficiency and quality of the products?"

On 31.08.2009 the assessee filed its income tax return for the relevant assessment year. The case was selected for scrutiny and a questionnaire along with notice under Section 142(1) of the Act was issued. In response to the same, counsel for the assessee attended the assessment proceedings. During the course of assessment, the Assessing Officer found that the assessee had made interest free advances to M/s MSL GHE Auto Components Pvt. Ltd. and M/s GHE Automotive Pvt. Ltd. and that the assessee had raised secured loans from Banks on which interest had been paid by it. Relying upon the proviso to Section 36(1)(iii) of the Act as also on the judgment of this Court in the case of **CIT vs. Abhishek Industries Ltd. (2006) 286 ITR 1**, the Assessing Officer disallowed proportionate interest on the afore-referred interest free advances.

The Assessing Officer further found that the capital work in progress for ₹1,70,61,107/- had not been put to use and as per its profit and loss account the assessee had paid interest on the secured loans. Relying upon the proviso of Section 36(1)(iii) of the Act as also on the judgment of this Court in *Abhishek Industries* (supra), the Assessing Officer disallowed proportionate interest on the same.

<u>Re: Question No.1</u>

The proportionate interest was disallowed on the interest free advances given to M/s MSL GHE Auto Components Pvt. Ltd. and M/s

GHE Automotive Pvt. Ltd. It is the case of the assessee that the above Companies were its sister concerns and that it had sufficient interest free funds in the shape of capital, reserve and surplus amounting to ₹713.14 lacs and it was out of these funds that advances were made to the above companies for commercial expediency.

The above stand was taken by the appellant in its written submissions filed before the CIT(A) but the discussion on the same by the CIT(A) and the Tribunal is not adequate. The written submissions of the appellant as set out in the order of the CIT(A) are as under: -

> *"The Revenue has disallowed part of interest u/s 36(1)(iii) on closing balance of MSL GHE Auto Components Pvt. Ltd. and GHE Automotive Private Limited. GHE Automotive Pvt. Ltd. was a Banglore based company with which the assessee jointly framed a new company MSL GHE Auto Components Pvt. Ltd. The assessee company is a major shareholder in MSL GHE Automotive Pvt. Ltd. and had advanced the funds to it as contribution and for working of the company. The assessee is a manufacturer of Auto components and GHE Automotive Pvt. Ltd. imports and sell auto components. The new company formed used to purchase raw material from Mobility Solutions Ltd. and also imported some material and manufactured auto components. It sold its material manufactured to outside parties. The assessee company has sold abs sheets to MSL GHE Auto components Pvt. Ltd. during the year. Thus, the funds were given for commercial expediency as a business necessity to both the companies so that the sales could be made. If the funds were not provided the company would not have been formed. The recipient company has used the amount received from assessee exclusively for business purposes & advance*

> *was given for commercial expediency and therefore in view of Apex Court judgment in the case of S.A. Builders Ltd. vs. CIT 288 ITR 1 interest should not be disallowed on such advances. The assessee has sufficient interest free funds in shape of Capital and Reserve and Surplus amounting to ₹713.14 lakhs and assessee is free to apply its interest free funds for business purposes including advances to other parties as a prudent business man. Further, the Ld. Assessing Officer has relied on judgment reported at 286 ITR 1 and SLP against this judgment has been admitted in Supreme Court which is pending for adjudication and various other High Court have already given the judgment in favour of appellant on ground that no notional disallowance can be made on the advances given during the course of business. Therefore, the issue is highly debatable in view of conflicting business."*

As per the appellant M/s GHE Automotive Pvt. Ltd. was a Bangalore based company with which the appellant jointly formed a new Company i.e. M/s MSL GHE Auto Components Pvt. Ltd. The assessee company was a major shareholder in M/s MSL GHE Automotive Pvt. Ltd. Interest free advances had been made by the assessee to M/s MSL GHE Auto Components Pvt. Ltd. and M/s GHE Automotive Pvt. Ltd. As per the assessee's own case, as set out above, how M/s GHE Automotive Pvt. Ltd. was a sister concern is neither borne out from the order of the CIT(A) nor the Tribunal.

It is the case of the assessee that it had sufficient interest free funds in the shape of capital, reserve and surplus amounting to ₹713.14 lacs. No discussion is found in either in the order of the CIT(A) or the Tribunal as to whether the assessee had such funds.

Re: Question No.2

On the second issue with regard to disallowance of proportionate interest on capital work in progress no details with regard to such capital which was allegedly not put to use are found in either the order of the CIT(A) or the Tribunal. Further no discussion is found as to which were these assets and on what basis it was held that they had not been put to use.

On both the above issues, the CIT(A) and the Tribunal have simply relied upon the order of this Court in Abhishek Industries case (supra) with inadequate discussion on the factual aspect of the matter. The law laid down through other relevant judgments of this Court including **M/s Hero Cycles Pvt. Ltd. vs. Commissioner of Income Tax (Central) Ludhiana, 2015 (379) ITR 347** and the judgments of the Apex Court including **S.A. Builders Limited vs. Commissioner of Income Tax (Appeals) and another, 2007 (288) ITR 1**, has not been considered.

In view of the above, after setting aside the impugned order passed by the Tribunal, we remand the matter to the Tribunal for deciding the appeal afresh. It would be up to the Tribunal to remand the matter further to the CIT(A).

The appeal is allowed in the above terms.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(DEEPAK SIBAL)
JUDGE

December 23, 2016
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(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No