

\$~4 & 5

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 831/2016

THE PR. COMMISSIONER OF INCOME TAX -6 Appellant
Through: Mr. Ruchir Bhatia and Mr. Puneet Rai,
Advs.

versus

NANAK RAM JAISINGHANI Respondent
Through: Mr. Arvind Kumar and Ms. Devina
Sharma, Advs.

+ ITA 832/2016 & CM No. 43456/2016

THE PR. COMMISSIONER OF INCOME TAX -6 Appellant
Through: Mr. Ruchir Bhatia and Mr. Puneet Rai,
Advs.

versus

NANAK RAM JAISINGHANI Respondent
Through: Mr. Arvind Kumar and Ms. Devina
Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER
20.12.2016

%

1. Two questions have been urged by the Revenue in these appeals filed under Section 260A of the Income Tax Act, 1961 (in short the Act):

(i) Whether the setting aside of the disallowance under

Section 43B of the Act by the Income Tax Appellate Tribunal (in short the Tribunal) was warranted?

(ii) Whether the disallowance on account of the loans/ advances made to the assessee's sister concern were correctly set aside?

2. Question no. (i) arises only for Assessment Year (AY) 2007-08 in ITA No. 831/2016.

3. The assessee for the AY 2007-08 could not claim or was not permitted to claim expenditure by way of interest payments to the Punjab & Sind Bank. This was because even though the liability to pay such interests amounting to ₹ 6,29,46,195/-, but such payments were not made. At the same time it was noticed that between 01.04.2007 and 01.06.2007 an amount in excess of Rs. 11.61 crores, which included the principal liability, had been deposited with the bank. The AO applied Section 43B and held that since the amounts were not paid during the relevant Assessment Year (AY), the provision was applied, disentitling the assessee to claim it as a lawful expense.

4. The Commissioner of Income Tax (Appeals) [CIT(A)], however, differed from the order of the AO and set aside the observations in this regard. The Tribunal affirmed the order of the CIT(A).

5. The learned counsel for the Revenue urges that as a matter of fact no amounts were paid to escape the disallowance under Section

43B during the relevant period i.e. the subsistence of the AY. In the circumstances, the Revenue was correct in contending that the amounts should not have been claimed as expenditure for the period.

6. The Tribunal's findings are premised upon its analysis of the facts. The relevant discussion in the impugned order is as follows:

“.... 2.9 The crux of above is that the assessee has undisputedly paid a sum of Rs.12.64 crores to the bank. As per Ld. A.R., Rs.12.64 crores constitutes the interest payment to the extent of Rs.7,15,52,676/- for the interest relating up to 31.03.2007, which has been paid during the relevant financial year. The account with the bank was finally settled by making complete payment of interest, principal and reimbursement to the bank for litigation charges on 15.06.2007 i.e. much prior to the date of filing of return for the year under consideration, which is 31.10.2007. The working of interest payment as claimed by the assessee is as under:

<i>Total payment made</i>	
<i>(01.04.2006 to 15.06.2007)</i>	<i>Rs. 12,64,00,000/-</i>
<i>Less: Litigation charges recovered</i>	
<i>By the bank from assessee</i>	<i>Rs. 5,36,264/-</i>
<i>Interest relating to period</i>	
<i>01.04.2007 to 15.06.2007</i>	
<i>(i.e. Assessment Year 2008-09.</i>	
<i>Therefore not relating upto</i>	
<i>Assessment Year 2007-08)</i>	<i>Rs. 43,11,060/-</i>
<i>Repayment of principal loan</i>	<i><u>Rs. 5,00,00,000/-</u></i>
	<i>Rs. 5,48,47,324/-</i>
<i>Net interest payment</i>	<i><u>Rs. 7,15,52,676/-</u></i>

2.10. It is further observed that the assessee has submitted all the necessary supporting documents like

bank certificate / bank statement as called for by the Assessing Officer. Merely because these documents / evidences were hand written, cannot be a reason to reject, which can prove the claim raised by the assessee. For allowing the claim of assessee u/s 43B(e), the requirement under law is that the assessee should have made actual payment of interest during the year under consideration. The assessee has filed the details of payments made to the bank during the year as well as bank certificate shows the payments received by the bank which are as under.

<i>From 01.04.2006 to 31.03.2007</i>	<i>Rs. 1,03,00,000/-</i>
<i>From 01.04.2007 to 16.06.2007</i>	<i><u>Rs. 11,61,00,000/-</u></i>
<i>Total</i>	<i>Rs. 12,64,00,000/-</i>

Now, the constituents of payment of Rs. 12,64,00,000/- are as under:

<i>Repayment of principal</i>	<i>Rs. 5,00,00,000/-</i>
<i>Litigation charges recovered by bank</i>	<i>Rs. 5,36,264/-</i>
<i>Interest relating to the period 01.04.2007 to 15.06.2007</i>	<i><u>Rs. 43,11,060/-</u></i>
	<i>Rs. 5,48,47,324/-</i>
<i>Balance amount of interest</i>	<i><u>Rs. 7,15,52,676/-</u></i>
<i>Total</i>	<i>Rs. 12,64,00,000/- ”</i>

7. It is quite evident that the facts here are undisputed. Although the assessee did not pay the concerned amount which it was bound to during the year or when the instalments fell due, it belatedly chose to satisfy its liability with the consequential payments and also liquidated his principal liability in the succeeding year before the due date of the filing of the return. In these circumstances, the findings of the Tribunal, in our opinion, cannot be faulted. The findings are

purely factual. No substantial question of law arises.

8. So far as the second question goes, the loans to the sister concern, we notice, from the assessee's own surplus funds as is evident from the following observations of the CIT(A):

“.....5.3. I have carefully considered the whole issue. In this case, bank term loan of Rs. 5 Cr was taken in 1999. Interest has always been allowed in the past on this term loan accepting the same as being used for business purposes. There are no other interest bearing funds availed by the appellant. Thus, it is a case where no interest bearing funds have been diverted as interest free loans and advances. There is absolutely no nexus of interest bearing funds being utilized for giving interest free loans and advances. For disallowing any claim of interest, it is necessary that the nexus between interest bearing funds being utilized for interest free loans and advances stands established. Hence, for this sole reason, I am of the considered opinion that no part of interest on bank loan can be considered for making any addition on account of interest free loans given and the addition for interest needs to be deleted for this reason itself. However, in this case, I find other facts also which do not justify this addition. The appellant was having interest free advances of Rs. 3.47 Cr as on 31.03.2007 while the interest free loans and advances given were only of Rs. 3.25 Cr i.e. much lesser than interest free advances available. It is a settled law that where interest free funds available at the disposal are far in excess of interest free loans and advances given by the appellant, no disallowance can be made.....”

9. The above factual findings have neither been contested nor has any other fact been shown to arrive at a contrary view. Consequently,

the impugned order cannot be faulted. No substantial question of law arises. The appeals are, therefore, dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

DECEMBER 20, 2016^{/kk}