

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No. 163 of 2017 (O&M)
Date of decision: 17.4.2017**

The Pr. Commissioner of Income Tax (Central), Ludhiana

.....Appellant

Vs.

**Shri Satish Bala Malhotra, Legal heir of Shri Ashok Kumar
Malhotra, Prop. M /s Modern Publishers, MBD House Railway Road,
Jalandhar.**

.....Respondent

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

Present: Mr Rajesh Katoch, Senior Standing Counsel for the appellant-revenue.

Ajay Kumar Mittal, J.

1. The revenue has preferred this appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 12.8.2016, Annexure A.III, passed by the Income Tax Appellate Tribunal, Amritsar Bench. Amritsar (in short, "the Tribunal") in ITA No. 194(Asr)/2015, for the assessment year 2010-11, claiming following substantial questions of law:-

“(i) Whether on the facts and in the circumstances of the case, the Hon’ble Income Tax Appellate Tribunal, Amritsar Bench, Amritsar has erred in deleting the addition of ₹ 2,39,01,531/- on account of disallowance of interest

expenditure, ignoring the specific finding of the CIT(A) that the assessee had not even attempted to show that the investments in sister concerns served any business purpose?

(ii) Whether on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal, Amritsar Bench, Amritsar has erred in deleting the addition of ₹ 2,39,01,531/- on account of disallowance of interest expenditure without appreciating the finding of the CIT(A) that the basic contradiction has not been addressed by the appellant in its argument. It has not been pointed out that interest bearing funds have been exclusively used for the purpose of business. The advancing of interest free amounts to sister concern has to be justified to be business necessity which has not been done by the appellant?

iii) Whether the Hon'ble ITAT has erred in not appreciating the fact that the assessee has not maintained any separate account for interest bearing/interest free funds. Therefore, the advance made to sister concerns cannot be said to be made out of interest free funds?

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. During the course of assessment proceedings, it was noticed by the Assessing Officer that the assessee had an amount of ₹ 72,28,15,197/- standing as investments in various related concerns but had not received any interest or return on account of such investments. The assessee submitted that the interest free advances to the related parties were made in view of the larger interest of the group. The Assessing Officer observed that after making advances, the assessee had himself applied for interest linked loans and was bearing the interest burden. The assessee failed to provide specific information as to how advances of interest free loans served the business of any of his

proprietorship business concerns. The Assessing Officer observed that if the assessee had excess surplus funds, what was the need to take interest bearing loans. Therefore, the interest paid to the Bank was not for any funds required for the assessee's own business but for making interest free advances to related parties. With these observations, the interest expenditure of ₹ 2,39,01,531/- claimed by the assessee was disallowed by the Assessing Officer in view of Section 40A(2)(a) and Section 36(1)(iii) of the Act. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 27.02.2015, Annexure A.II, the CIT(A) confirmed the disallowance of interest expenditure made by the Assessing Officer. The CIT(A) observed that the assessee had not even attempted to show that the investments in sister concerns served any business purpose. The CIT(A) further observed that the funds of the assessee company comprised of self generated funds as well as interest bearing loans. It had not been pointed out by the assessee that the interest bearing funds had been exclusively used for the purpose of business. Thus, the disallowance of interest expenditure made by the Assessing Officer was confirmed by the CIT(A). Not satisfied with the order, the assessee filed an appeal before the Tribunal. Vide order dated 12.8.2016, Annexure A.III, the Tribunal allowed the appeal filed by the assessee, deleting the addition on account of disallowance of interest expenditure. Hence, the instant appeal by the appellant-revenue.

3. We have heard learned counsel for the appellant-revenue.

4. After examining the matter, it has been categorically recorded by the Tribunal that in the case of the assessee, non-interest bearing funds are more than non interest bearing investments. Further, the assessee had declared more interest income on fixed deposits than the

interest paid by him on interest bearing funds. The total non interest bearing funds were to the tune of ₹ 84,82,25,180/- against which the assessee had invested as non interest bearing investments to the tune of ₹ 72,28,15,197/-. It was concluded that the assessee had not deployed interest bearing funds into non interest bearing investments. The relevant findings recorded by the Tribunal read thus:-

“12. In the present case, we find that no interest bearing funds in the form of Proprietor’s Capital Account and sundry creditor as apparent from (PB page 2) and (PB page 6) are much more than the amount invested in the group companies without charging of interest. The proprietor’s capital as appearing in PB page 2 is ₹ 1,54,45,382/- whereas the sundries which are also non interest bearing funds appearing as in PB page 6 are to the tune of ₹ 83,27,79,7908/-. Therefore, the total of non interest bearing funds as available with the assessee are to the tune of ₹ 84,82,25,180/- against which the assessee had invested as non interest bearing investments to the tune of ₹ 72,28,15,197/-. Therefore, non interest bearing funds are more than non interest bearing investments. Further we find that assessee has declared more interest income on fixed deposits than the interest paid by him on interest bearing funds. In view of the facts and circumstances, it cannot be said that assessee had deployed interest bearing funds into non interest bearing investments.

13. We further find that assessee is a sole proprietor of M/s Modern Publishers and is also a majority shareholders in the companies in which interest free investments have been made. Paper Book page 12 is the list of companies in which the assessee is holding a major chunk of shares. The rest of the shares are also held by other family members of the assessee. For the sake of convenience the chart showing shareholding of assessee in the companies has been made part of this order.

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Therefore, from the above chart, it can be safely concluded that assessee is a major share holder and therefore the advance/investments made by assessee in these companies cannot be said to be without commercial expediency. There would be a direct benefit to the assessee if the interest free investments made in these companies results into more profits to these companies and indirectly to the assessee.”

5. Learned counsel for the appellant has not been able to show that the findings recorded by the Tribunal are illegal or perverse warranting interference by this Court. Further, it was not disputed by learned counsel for the revenue that similar issue has already been adjudicated by this Court against the revenue in ITA No.31 of 2017 (***The Pr. Commissioner of Income Tax (Central) Ludhiana vs. M/s Malhotra Book Depot, MBD House, Railway Road, Jalandhar***), decided on 23.2.2017. Thus no substantial question of law arises. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

April 17, 2017
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes