

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

ITA No. 31 of 2017 (O&M)
Date of decision: 23.02.2017

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

.....Appellant

Vs.

M/s Malhotra Book Depot, MBD House, Railway Road, Jalandhar.

.....Respondent

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

Present: Mr Rajesh Katoch, Advocate for the appellant.

Ajay Kumar Mittal,J.

1. This order shall dispose of ITA Nos. 31 and 82 of 2017 as according to the learned counsel for the appellant-revenue, the issue involved in both the appeals is identical. However, the facts are being extracted from ITA No. 31 of 2017.

2. ITA No. 31 of 2017 has been preferred by the appellant-revenue under Section 260A of the Income Tax Act, 1961 (in short, “the Act”) against the order dated 29.06.2016, Annexure A.III, passed by the Income Tax Appellate Tribunal, Amritsar Bench. Amritsar (in short, “the Tribunal”) in ITA No. 196(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 ₹ 54,10,225/- 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 ₹ 54,10,225/- on account of disallowance of interest expenditure without appreciating the finding of the CIT(A) that the advancing of the interest free funds in the garb of share application money by the assessee had been the basic reason for the assessee to continue to raise interest bearing funds and the advancing of interest free funds to sister concerns had to be justified to be a business necessity which had not been done by the assessee?”

3. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee is engaged in the business of publication of help and guide books. During the course of assessment proceedings, it was noticed by the Assessing Officer that during the relevant assessment year, the assessee had an amount of ₹ 20,32,60,000/- as investments in various related concerns but had not received any interest or return thereon. According to the assessee, interest free advances had been made to the related parties in view of the larger interest of the group. The Assessing Officer observed that after making advances, the assessee had 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 its business interests. The Assessing Officer observed that if the assessee had excess

surplus funds, what was the need to take interest bearing loans. Thus, proportionate interest expenditure to the tune of ₹ 54,10,225/- was disallowed by the Assessing Officer and was added to the income of the assessee vide order dated 18.03.2013, Annexure A.I. 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 assessee claimed that the investments had been made from self owned funds and not from interest bearing funds. It was recorded by the CIT(A) that the advancing of interest free funds to assessee concerns had to be justified to be a business necessity which had not been done by the assessee. Thus, the disallowance of interest expenditure made by the Assessing Officer was confirmed by the CIT(A) vide order dated 27.02.2015, Annexure A.II. Not satisfied with the order, the assessee filed an appeal before the Tribunal. Vide order dated 29.06.2016, Annexure A.III, the Tribunal allowed the appeal filed by the assessee, deleting the addition of ₹ 54,10,225/- on account of disallowance of interest expenditure. Hence, the instant appeals by the revenue.

4. We have heard learned counsel for the parties.

5. The matter has been considered by the Tribunal in detail. A perusal of the order passed by the Tribunal shows that the capital of the assessee company was ₹ 31,71,64,888/- for the assessment year 2010-11. The investment in sister concerns in the shape of share application money was to the tune of ₹ 20,32,60,000/-. The assessee was having current

liabilities and profits to the tune of ₹ 17,41,39,750/-. The total non interests bearing funds available with the assessee were at ₹ 49,43,04,638/-. Out of the total funds on which no interest was paid by the assessee amounting to ₹ 49,43,04,638/-, the assessee had advanced ₹ 20,32,60,000/-. Thus, there was sufficient non-interest borrowing funds out of which the assessee had advanced/invested in sister concerns. It was further recorded that in the assessment year 2012-13 also, the assessee had sufficient interest free funds to make investment in the group companies relying upon the decision of the Apex Court in ***Hero Cycle Private Limited Vs. Commissioner of Income Tax (Central)*** 63 *Taxmann.com* 308 and ***Commissioner of Income Tax-I, Ludhiana Vs. M/s Abhishek Industries Limited, Ludhiana***, (2006) 286 ITR 1(P&H). The Tribunal allowed the appeals filed by the assessee. The relevant findings recorded by the Tribunal read thus:-

“9.We have heard the rival parties and have gone the material placed on record. We find that for Assessment year 2010-11 the capital of the assessee company was ₹ 31,71,64,888/- which is apparent from the copy of balance sheet as placed in (PB-2). As against this the investments in sister concern in the shape of share application money as per paper book page 2 and as noted by Assessing Officer is ₹ 20,32,60,000/- . We further find that assessee was having current liabilities and profits to the tune of ₹ 17,41,39,750/-, therefore, the total of non interests bearing funds available with the assessee were paid at ₹ 49,43,04,638/-. These figures are verifiable from the copies of balance sheet as placed in (PB page 2). Out of total available funds on which no interest was paid by assessee amounting to ₹ 49,43,04,638/-, the assessee had advanced ₹ 20,32,60,000/-, therefore, one fact is clear that in ITA No.196(ASR)/2015, there was sufficient non interest borrowing funds out of which the assessee had advanced/invested in the sister concerns.

10. Similarly, we find that for assessment year 2012-13 the capital of the firm as per balance sheet placed at (PB Page 3) was ₹ 13,21,61,500/- and the interest free current liabilities were to the tune of ₹ 91,20,514/- making the total availability of interest free funds to the tune of ₹ 104.58 crores. The assessee in this year had made investments in the group concerns as noted by Assessing Officer to the tune of ₹ 53.76 crores. Therefore, we find that in this year also the assessee had sufficient interest free funds to make investment in the group companies. Further we find that learned CIT(A) has followed the decision of Punjab & Haryana High Court in the case of Abhishek Industries and has further relied upon the decision of M/s Bright Enterprises Private Limited, decided by Amritsar Bench, we find that the decision of Bright Enterprises Private Limited has been overruled by Punjab and Haryana High Court. The findings of Hon'ble Punjab & Haryana High Court are reproduced below.

“Held, allowing the appeal, that whether the amount was debited to the account of the sister concern in respect of the payment made or whether the amount was actually paid to the sister concern and used by it for the purpose of business, was immaterial. Either way the amount was used for the business of the sister concern. It was not even suggested that the advance was used by the sister concern for the purpose other than for the purposes of its business. In the memorandum of appeal, the assessee expressly stated that it had advanced the amount to its sister concern as a measure of commercial expediency for the purpose of business. The assertion was never denied. The assessee owned about 89 per cent of the equity capital. When a holding company invested money for the purpose of the business of its subsidiary, it must necessarily be held to be an expense on account of commercial expediency. A financial benefit of any nature derived by the subsidiary on account of the amounts advanced to it by the holding company would not merely indirectly but directly benefit its holding company. There would be a direct benefit on account of advance made by the

assessee to its sister company, if it improved the financial health of the sister company and made it a viable enterprise. But it was not necessary that the advance results in a positive tangible benefit. Thus, the assessee was entitled to the deduction under Section 36(1)(iii) of the Income Tax Act, 1961.”

6. 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. Thus no substantial question of law arises. Consequently, both the appeals stand dismissed.

(Ajay Kumar Mittal)
Judge

February 23, 2017
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes