

Gurbax Singh  
2017-06-02 17:31

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

**ITA No. 87 of 2017 (O&M)  
Date of decision: 24.07.2017**

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

**.....Appellant**

**Vs.**

**M/s Holy Faith International Pvt. Ltd., MBD House, Railway Road,  
Jalandhar**

**.....Respondent**

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL  
HON'BLE MR. JUSTICE AMIT RAWAL**

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

**Ajay Kumar Mittal,J.**

1. The appellant-revenue has filed the instant appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 13.6.2016, Annexure A.III, passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (in short, "the Tribunal") in ITA No. 32(Asr)/2015, for the assessment year 2012-13 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 ₹ 3,71,68,025/- made by the Assessing Officer, 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 ₹ 3,71,68,025/- made by the Assessing Officer, on account of disallowance of interest expenditure without appreciating the finding of the CIT(A) that funds raised on interest for working capital requirements had to be raised to make up for the shortfall caused by interest free investments in sister concerns which did not serve any business purpose for the assessee company?
- (iii) Whether the Hon'ble ITAT, while allowing relief to the assessee, has erred in law in ignoring an important issue that the investment made by the assessee in the shape of 'Share Application Money' in those sister concerns, the share capital of which was almost fully subscribed was a colorable transaction of interest free loans/advances to its sister concerns and such colorable transactions are not permissible in the eyes of law?

2. A few facts necessary for adjudication of the controversy involved, as narrated in appeal, may be noticed. The assessee-company is engaged in the business activity of publication of children books and as printers at its plants situated at Sahibabad in Uttar Pradesh and Jalandhar. During the course of assessment proceedings, it was noticed by the Assessing Officer that the assessee had an amount of ₹ 149,36,11,300/- standing as investments as 'Share Application Money' in various related concerns but the assessee company had not received any interest or return on account of such investments. Major investment was in the shape of Share Application Money with M/s MBD Printographics Private Limited. From the perusal of balance sheet of M/s MBD Printographics Private Limited, the Assessing Officer noticed that share capital of the said

company had already been fully subscribed and there was no reason to accept the funds from the assessee as 'Share Application Money'. It was concluded that the investment was colorable transaction of loan/advance without any interest to its sister concern in the shape of 'Share Application Money'. Similar was the position with other investments. The assessee had claimed expenditure on account of Bank interest. Since the assessee had not been able to prove with evidence that interest bearing funds were used exclusively for business purposes, the expenditure of ₹ 3,71,68,025/- of bank interest on CC limit, was disallowed and added to the income of the assessee, vide order dated 31.01.2014, Annexure A.1. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 12.11.2014, Annexure A-II, the CIT(A) confirmed the disallowance of interest expenditure made by the Assessing Officer. It was observed that the assessee had not even attempted to show that the investments in sister concerns served any business purpose. The entire emphasis of the assessee was to support the claim that the impugned investments had been made from self owned funds and not from interest bearing funds. The investments had been made from a separate current account in which the deposits represented accruals from the business of the assessee company i.e. sales. With these observations, the disallowance of interest expenditure made by the Assessing Officer was confirmed by the CIT(A). Aggrieved by the order, the assessee filed appeal before the Tribunal. Vide order dated 13.06.2016, Annexure A.III, the Tribunal allowed the appeal of the assessee deleting the addition on account of disallowance of interest expenditure. It was held that the impugned advance had been made out of interest free funds available with the assessee and there was no question for disallowance of interest under

Section 36(1)(iii) of the Act. Thus, the disallowance of interest under Section 36(1)(iii) pertaining to the sister concerns upheld by the CIT(A) was not held to be justified. Hence the instant appeal by the appellant-revenue.

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

4. A perusal of the order passed by the Tribunal shows that relying upon the judgment of this Court in ***Bright Enterprises Private Limited Vs. Commissioner of Income Tax*** (2016) 381 ITR 107, it was recorded that commercial expediency in advancing loans does not arise only on account of there being transactions directly between the holding company and the subsidiary company or between the group companies inter se. The two companies may even be in a different line of business. It would make no difference. It would still be commercially expedient for one group company to advance amounts to another group company. In the present case, the impugned advance had been made out of interest free funds available with the assessee and, therefore, there was no question of disallowing interest under Section 36(1)(iii) of the Act. After considering the entire evidence on record and the case law on the point, it was concluded by the Tribunal that disallowance of interest under Section 36(1)(iii) of the Act pertaining to the sister concerns was not justified. The relevant findings recorded by the Tribunal in this regard read as under:-

“We have heard the rival contentions and have perused the material available on record. It is seen that the reliance placed by the Ld. CIT(A) on the judgment of ‘Bright Enterprises Private Limited’ of the ITAT, Amritsar Bench, is not proper, since that judgment has been reversed by the Hon’ble Jurisdictional High Court vide order dated 26.07.2015, reported in 381 ITR 107 (copy placed at APB 100 to 106), holding as under:-

“17. The Assessing Officer’s view that the advance was not for business purposes as the appellant had no business dealing with the sister company is erroneous. Commercial expediency in advancing loans does not arise only on account of there being transactions directly between the holding company and the subsidiary company or between the group companies inter se. The two companies may even be in a different line of business. It would make no difference. It would still be commercially expedient for one group company to advance amounts to another group company if, for instance, as a result thereof the former benefits. In the present case, as we have already demonstrated, there would be a direct benefit on account of the advance made by the appellant to its sister company if the same improves the financial health of the sister company and makes it a viable enterprise. We hasten to add that it is not necessary that the advance results in a positive tangible benefit. So long, as the amount is advanced with that view in mind or with any other commercially expedient view in mind that is sufficient.”

7. Further, the judgment in the case of ‘Abhishek Industries’ (supra) relied upon by both the Authorities below has also been overruled by the Hon’ble Supreme Court in the case of ‘Hero Cycles Vs. CIT’, 379 ITR 347 (SC) (copy placed at APB 112 to 116), in favour of the assessee by holding as follows:

“XXXXXXXXXXXXX.

Assessee had a credit balance in the bank account when the said advance of ₹ 34 lakhs was given. Company had reserve/surplus to the tune of ₹ 15 crores and, therefore, the assessee company could in any case, utilize those funds for giving advance to its directors.”

8. Further, the reliance on the following judgments also support the case of the assessee overruling the judgment of ‘Abhishek Industries’, wherein it has been held that the disallowance under Section 36(1)(iii) is uncalled for:

(i) ‘CIT-1, Ludhiana Vs. Rakesh Gupta, ITA No.37-2014, dated 2.07.2015.

(ii) ‘ACIT Vs. Omax Bikes Limited’ ITA No.1085/Chd/2013 dated 06.08.2015.

9. We are of the view that the ld. Counsel for the assessee is correct in contending that since the decisions in the case of ‘Abhishek Industries Limited’ (supra) and ‘Bright Enterprises Private Limited (supra) followed by the Authorities below while making and confirming addition have been overruled by the Hon’ble Courts, the addition does not survive.

10. In view of the above discussion, we hold that the impugned advance has been made out of interest free funds available with the assessee and there was no question of whatsoever for disallowing interest under Section 36(1)(iii) of the Act. Accordingly, we hold that the disallowance of interest under Section 36(1)(iii) pertaining to the sister concerns upheld by the ld. CIT(A) is not justified, hence, the same is deleted. Thus, the appeal of the assessee is allowed.”

5. Learned counsel for the appellant-revenue has not been able to show that the findings recorded by the Tribunal are illegal or perverse or based on misreading of evidence on record warranting interference by this Court. Thus, no substantial question of law arises. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)  
Judge

July 24, 2017  
‘gs’  
Whether speaking/reasoned  
Whether reportable

(Amit Rawal)  
Judge  
Yes  
Yes