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

+ **INCOME TAX APPEAL 1130/2017**

Date of decision: 25th September, 2018

PRINCIPAL COMMISSIONER OF INCOME TAX – 7..... Appellant

Through: Mr. Ashok K. Manchanda, Sr. Standing
Counsel with Mr. Amar and Mr. Aditya
Khamparia, Advocates.

versus

REEBOK INDIA COMPANY Respondent

Through: Mr. Neeraj Jain and Mr. Aniket D.
Agarwal, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

This appeal by the Revenue under Section 260A of the Income Tax Act, 1961, in the case of Reebok India Company relates to the Assessment Year 2011-12 and arises from the order of the Income Tax Appellate Tribunal (Tribunal, for short) in ITA No. 954/Del/2016.

2. The present appeal raises only one question/issue which relates to disallowance of part interest paid on unsecured loans of Rs.502.69 crores as the respondent-assessee had advanced Rs.172.59 crores to third parties on which no interest was charged and received. The Assessing Officer had accordingly proportionately disallowed an amount of

Rs.23.60 crore from the interest of Rs.68.75 crores/- paid by the respondent-assessee.

3. Learned counsel for the Revenue has drawn our attention to the order passed by the Assessing Officer which refers to the letter dated 10th March, 2015 written by the assessee to the Assessing Officer providing details of 50 top parties to whom advances had been made/extended. It was stated that the advances were made on account of purely commercial reasons and business exigencies and were recoverable from such parties.

4. The Dispute Resolution Panel had affirmed the addition as proposed in the draft assessment order observing that the Assessing Officer was empowered by law to examine if such expenses meet the test/rigours of “business connection” and “expediency”. Further, the respondent-assessee had failed to furnish necessary details on the proposed disallowance, though with regard to other proposed additions details had been furnished by the respondent-assessee.

5. However, the Tribunal has deleted this addition of Rs.23.60 crores recording the following findings:-

“16. The last component of this ground is the disallowance of proportionate interest of Rs.23,60,71,053/- on unsecured loans amounting to Rs.502.69 crore. It was observed by the AO that the assessee claimed to have paid interest, *inter alia*, on unsecured loans amounting to Rs.502.69 crore. The AO noticed that there were outstanding advances to the tune of Rs.172.59 crore on which no interest was charged by the assessee. The AO made proportionate disallowance of interest of Rs.23.60 crore by multiplying the amount of

Advance given with the amount of Finance cost and then dividing it with the amount of Unsecured loans. The assessee is aggrieved against this addition.

17. Having heard both the sides perused the relevant material on record, we find from Schedule 8 of the assessee's balance sheet, which contains details of Loans and advances, that as against the closing balance of advances amounting to Rs. 172.59 crore, the balance in the preceding year ending on 31.3.2010 stood at Rs. 173.41 crore. This shows that the amount of advance has come down slightly *vis-a-vis* the preceding year. The Id. AR contended that no disallowance of interest on such outstanding brought forward Loans and Advances receivable was made in the preceding year. This contention has not been controverted on behalf of the Revenue. We find that the A.O has simply computed the disallowance of interest in proportion to the amount of interest bearing unsecured loans obtained amounting to Rs.502.69 crore and interest free advances given amounting to Rs. 172.59 crore. The fact that the assessee did pay interest on such unsecured loans has not been disputed. In view of the fact that the assessee paid interest on unsecured loans and did not earn any interest on advances given, we cannot disallow proportionate interest genuinely paid on unsecured loans taken for business purpose. Section 36(1)(iii) simply provides that deduction is allowable for the amount of interest paid in respect of capital borrowed for the purpose of business. As the assessee paid interest on capital borrowed for the business purpose and it is not the case of the AO that the assessee diverted such unsecured loans for a non-business purpose, the disallowance of interest cannot be countenanced. We, therefore, allow deduction of Rs. 23.60 crore."

6. We have examined the reasoning given by the Tribunal which is primarily factual. The factum that the loans amounting to Rs.502.69/-crores were outstanding, was undisputed. Payment of interest was also disputed. Tribunal was of the view that the respondent-assessee had paid interest on capital borrowed for business purpose and in the absence of any allegation and finding that the respondent-assessee had diverted unsecured loans for non-business purpose no disallowance could be made. As per Section 36(1)(iii) of the Act interest paid for capital borrowed for purpose of business has to be allowed as a deduction.

7. The Supreme Court in ***S.A. Builders Ltd. Versus Commissioner of Income Tax (Appeals) Chandigarh And Another***, (2007) 1 SCC 781, had interpreted section 36(1)(iii) of the Act to observe that interest paid on capital borrowed for the purpose of business is to be allowed as a deduction in computing taxable income. The expression "for purposes of business or profession" occurring in Section 36(1)(iii) of the Act is wider in scope than the expression "for the purpose of earning income, profits or gains". Accordingly, expenditure voluntarily incurred and meeting the "commercial expediency" test is to be allowed as a deduction. It is immaterial if a third party also benefits by the said expenditure. The expression "commercial expediency" is again of wide import and is satisfied once it is established that there was a connection and nexus between the interest paid claimed as expenditure and the business of the assessee. Purpose of business need not be the business of the assessee, for deduction under Section 36(1)(iii) of the Act to be allowed. Further, Revenue cannot assume the role and occupy armchair of a businessman

to decide whether expenditure was reasonable. The Revenue cannot look at the matter from its own standpoint, but opinion and decision of a businessman on “business expediency” matters. Money borrowed even when advanced to a subsidiary for some business purpose would qualify for deduction of interest. However, if the money borrowed is utilised by the assessee for personal benefit and not for business purpose, interest paid on that money would not satisfy the test of “commercial expediency”. In the context of the present case the unsecured loans were not used for personal purpose. Merely because non-interest-bearing advances were given to third parties, would not justify a finding that the test of “commercial expediency” was not satisfied. Interest free advances were preferred to the parties connected with the business of the respondent/assessee. Money taken on loan was not diverted for non business purpose. The findings of the Tribunal are in accordance with the law.

8. In these circumstances, we are not inclined to frame any substantial question of law. The present appeal by the Revenue is dismissed.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

SEPTEMBER 25, 2018
MR