IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ITA No. 214 of 2019
Date of decision: 15.1.2020

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

v.

M/s Genex Industries Ltd.
.. Respondent

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rajesh Katoch, Senior Standing Counsel and
Ms. Pridhi Jaswinder Sandhu, Junior Standing Counsel
for the appellant.

...

AVNEESH JHINGAN, J.

This order shall dispose of ITA Nos. 214, 208 and 217 of 2019, as similar questions are raised.

The revenue has filed the appeals under Section 260A of the Income Tax Act, 1961 (for short, 'the Act'). For the sake of convenience, facts from ITA No. 214 of 2019 have been taken. Following substantial questions of law have been claimed:

"(i) Whether in the facts and circumstances of the case, the order of Hon'ble ITAT is perverse as it has ignored the lack of business purpose and commercial expediency of the transaction and decided the issue only on account of availability of interest free funds with the assessee company.

(ii) Whether in the facts and circumstances of the case and in law, the Hon'ble ITAT has erred in confirming the decision of the CIT (A) without examining that the transaction was without any business consideration or commercial expediency and therefore, the interest claimed on borrowed funds was not allowable u/s 36(1)(iii) of the Income Tax Act, 1961.

(iii) Whether the impugned order dated 31.10.2018 passed by ITAT is sustainable in the eyes of law or maintainable in the facts and circumstances of the case."

The facts in brief are that the assessment year involved is 2012-13. The Assessing Officer during assessment proceedings noticed the fact that the assessee had given interest free advances to its group concerns but was claiming interest expenses on borrowed capital. The assessment order dated 31.3.2016 was passed under Section 153A of the Act, disallowing interest claimed under Section 36(1)(iii) of the Act. The Commissioner of Income Tax (Appeal) (hereinafter referred to as ' the Appellate Authority') partly allowed the appeal vide order dated 22.2.2018, considering the fact that there were sufficient interest free funds available with the assessee from which interest free loan and advances were made. It was held that the finding recorded on transfer of interest bearing funds to the group concerns cannot be sustained. Addition made by disallowing the interest claimed under Section 36(1)(iii) of the Act was set aside. The revenue filed an appeal before the Tribunal. The appeal was dismissed on 31.10.2018. The Tribunal upheld the finding of the Appellate Authority that there were sufficient interest free funds for advancing loan to the group concerns. Reliance was placed upon a decision of this Court in **Bright Enterprises**

(P.) Ltd. v. Commissioner of Income Tax, 2016 (381) ITR 107.

Learned counsel for the revenue is not in a position to dispute that the matter with regard to disallowance of deduction under Section 36(1)(iii) of the Act is covered in favour of the assessee by the decision of this Court in **Bright Enterprises (P.) Ltd.'s case (supra)** and of the Supreme Court in **S.A. Builders Ltd. v. Commissioner of Income Tax (Appeals) and another, 2007 (15) SCC 147.** However, it is argued that the Tribunal has not decided the issue of commercial expediency for making advances to the group concerns of the assessee. There is no dispute raised that advances made to the group concerns were of the assessee. Moreover, the said issue was never pressed before the Tribunal as is evident from the order. Nothing has been produced to show that the issue was raised and pressed at the time of arguing the appeal.

For the reasons mentioned above, no interference is called for in the order of the Tribunal.

The appeals are dismissed.

(AVNEESH JHINGAN)
JUDGE

(AJAY TEWARI)
JUDGE

15.1.2020
mk

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No