

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

(105)

**ITA-272-2023 (O&M)
Decided on : 19.10.2023**

Principal Commissioner of Income Tax-I, Jalandhar

.....Appellant

Versus

M/s Max India Ltd.

.....Respondent

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present: Ms.Gauri Neo Rampal, Sr.Standing Counsel for the appellant.

G.S. Sandhawalia, J. (Oral)

1. The present appeal, filed under Section 260A of the Income Tax Act, 1961 (for short '1961 Act'), is directed against the order dated 24.09.2021 (Annexure A-3) of the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short, the 'Tribunal') passed in ITA-121/Asr/2018 for the assessment year 2014-15.

2. The substantial questions of law which are sought to be raised in the present case read as under:

“(i) Whether on the facts and circumstances of the case and in law the ITAT has erred in holding that no interest payment is disallowable under section 36(1)(iii) on interest free loan given to sister concerns whereas the assessee itself in the same year, has charged interest @ 13.5% on advances given to its another concerns M/s Pharmax Corp Ltd.?

(ii) Whether on the facts of the case, Ld. ITAT has erred in law ignoring the AO's finding that the assessee company has advanced interest free loans to the subsidiaries/sister concerns for non business purpose?

(iii) Whether ITAT has erred in approving CIT(A)'s order following A.Y. 2008-09, since on similar fact matrix as in the present case the jurisdictional High Court in CIT Vs. Kudu Industries in ITA No.388 of 2014 (O&M) dated 31.07.2015 has upheld disallowance of interest at average rate of interest on which funds were borrowed?

(iv) Whether ITAT order is not perverse and whether it has not erred in approving CIT(A)'s order following A.Y. 2008-09, since fact matrix in each year is different and fact matrix of A.Y. 2008-09 is distinguishable from that of A.Y. 2014-15?"

3. The CIT(A), while allowing the appeal of the assessee on 28.12.2017 (Annexure A-2) had relied upon earlier order of the Tribunal for the year 2008-09 by holding that interest free funds available with it were sufficient for advancing interest free amounts to its subsidiaries. It was further held that the loans given to the subsidiaries cannot be disallowed on account of interest expense incurred. It was noticed that the said order had been upheld by this Court in ITA-219-2013 titled *Commissioner of Income Tax, Jalandhar 1, Jalandhar Vs. M/s Max India Limited, Bhai Mohan Singh Nagar, Rail Majra, District Nawanshahar* decided on 08.03.2017 and that after giving interest free loans of Rs.7.04 crores to its subsidiary companies, the assessee was left with surplus interest free funds of Rs.53.86 crores which were utilized for giving interest free advances. Resultantly, the disallowance made by the Assessing Officer was not found to be justified and deleted to the tune of Rs.4,63,75,270/-.
4. The appellant-Department had approached the Tribunal wherein it was held that since on an earlier occasion, for the Assessment Year 2008-09, the matter had been decided against the Department and the SLP was pending. The appeal was thus dismissed by holding that subject to final outcome of the SLP filed before the Apex Court it would be applicable to the assessee.
5. It is not disputed that Civil Appeal No.12446 of 2017 filed by the Department has also been dismissed as withdrawn on 06.01.2020 due to low tax effect as per instructions issued by the Department of Revenue, Ministry of Finance dated 22.08.2019. Resultantly the appeal was dismissed as withdrawn leaving the question of law open.

6. A perusal of the order of the Tribunal would go on to show that it has been recorded that the respondent-Company had ample surplus funds available which could be utilized for giving loan advances while referring to the record before it. Resultantly, the Tribunal has relied upon the judgment passed in **S.A.Builders Ltd. Vs. Commissioner of Income Tax (Appeals), Chandigarh & another, [2007] 158 Taxman 74 (SC)**. In the said case, the Apex Court came to the conclusion that the assessee would ordinarily be entitled to deduction of interest on its borrowed loans if it had a deep interest in its subsidiary to whom it had advanced the money. It was accordingly held that for commercial expediency if the money had been advanced it has to be examined from the view of the prudent businessman and not from the view point of the revenue. The relevant portion of the judgment reads as under:

“36. We agree with the view taken by the Delhi High Court in [CIT vs. Dalmia Cement \(Bhart\) Ltd.](#) (2002) 254 ITR 377 that once it is established that there was nexus between the expenditure and the purpose of the business (which need not necessarily be the business of the assessee itself), the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize its profit. The income tax authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities must not look at the matter from their own view point but that of a prudent businessman. As already stated above, we have to see the transfer of the borrowed funds to a sister concern from the point of view of commercial expediency and not from the point of view whether the amount was advanced for earning profits.

37. We wish to make it clear that it is not our opinion that in every case interest on borrowed loan has to be allowed if the assessee advances it to a sister concern. It all depends on the facts and circumstances of the respective case. For instance, if the Directors of the sister concern utilize the amount advanced to it by the assessee for their personal benefit, obviously it cannot

be said that such money was advanced as a measure of commercial expediency. However, money can be said to be advanced to a sister concern for commercial expediency in many other circumstances (which need not be enumerated here). However, where it is obvious that a holding company has a deep interest in its subsidiary, and hence if the holding company advances borrowed money to a subsidiary and the same is used by the subsidiary for some business purposes, the assessee would, in our opinion, ordinarily be entitled to deduction of interest on its borrowed loans.”

7. Keeping in view the above, we are of the considered opinion that a factual finding has been recorded that there were ample surplus funds available for advancing loans and that the respondent-Company had interest free funds of Rs.707,20,07,341/- after advancing interest free loan of Rs.1,81,61,188/- to the subsidiary companies and was making investments of Rs.214,34,95,000/- during the year. The Tribunal in the present case has examined the record and come to the conclusion that there was ample surplus funds available with the company that could be extended for loan and advances and therefore, the movement in the said schedule vis-à-vis the cash free system of the company was held to be justified. Accordingly, keeping in view the factual finding recorded, we do not find that any substantial question of law arises for consideration.

8. Resultantly, in view of the above discussion, the present appeal is hereby dismissed in limine. All pending application(s) also stand disposed of.

(G.S. SANDHAWALIA)

JUDGE

(HARPREET KAUR JEEWAN)

JUDGE

October 19, 2023

Sailesh

Whether speaking/reasoned :	Yes	
Whether Reportable :		No