

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

Reserved on 06.02.2023

Date of pronouncement: 16.02.2023

ITA-407-2011(O&M)

M/s. Beekons Industries Limited

....Appellant

V/s.

Commissioner of Income Tax and another

....Respondents

AND

ITA-33-2012 (O&M)

M/s. Beckons Industries Limited

....Appellant

V/s.

Commissioner of Income Tax and another

....Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Ms. Radhika Suri, Senior Advocate with
Mr. Abhinav Narang, Advocate and
Mr. Ishan Aggarwal, Advocate
for the appellant(s) in ITA-407-2011
and ITA-33-2012.

Ms. Gauri Neo Rampal, Senior Standing Counsel
for the Income Tax Department.

Ritu Bahri, J.

CM-29916-CII-2011

For the reasons mentioned in the application, the same is
allowed and the delay of 32 days in refiling the appeal is condoned.

Main cases

This order shall dispose of two income tax appeals i.e. ITA No.
407 of 2011 and ITA No. 33 of 2012 as the issue involved in both the

appeals is identical. For the sake of brevity, facts are being extracted from ITA-407-2011.

The appellant has come up in appeal against the order dated 13.05.2011 (Annexure A-4) of the Income Tax Appellate Tribunal, Chandigarh (for short 'Tribunal') for the assessment year 2006-07. The Tribunal was examining the appeal filed by the Department against the order passed by the learned CIT(A) on 30.04.2010, on the following grounds:-

- “1. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in allowing appeal of the assessee without appreciating the facts of the case.
2. On the facts and in the circumstances of the case, the ld. CIT(A) has erred in deleting the addition of Rs.13,61,450/- made by the AO for not charging of interest on loans and advances given to Directors and Subsidiaries.
3. It is prayed that the order of the ld. CIT(A) be set aside and that of the AO may be restored.
4. The appellant craves leave to add or amend and ground of appeal before the appeal is heard or is disposed off.”

The assessee is a private ltd. co. engaged in the business of manufacturing of computer stationary. Return of income was E-filed on 29.11.2006 returning total income at Rs.11,03,064/-. The return was selected for scrutiny. During the course of scrutiny, the assessee was found to have given loans and advances amounting Rs.3,11,22,866/- to its

directors, relatives of directors and sister concerns in which the Directors had substantial interest without charging any interest on them while the assessee-company was paying interest on loans taken from banks and other financial institutions. The AO considered the aforesaid advances given to the directors, relatives of directors and the sister concerns as diversion of funds by the assessee and therefore disallowed a sum of Rs.13,61,450/- being interest paid on loan taken on pro rata basis. The finding recorded by the AO in this behalf reads as under:-

The company is engaged in the business of manufacturing of computer stationary. During the course of the assessment proceedings, it was noticed that an amount of Rs.3,11,22,866/- has been given as advance to Directors, relatives of Directors and to companies in which Directors have substantial interest and no interest has been charged in spite of the facts that the company is paying interest on loans taken from banks and other financial institutions. The interest so paid has been claimed as expenses by the assessee. The interest paid on such loans amounting to Rs.13,61,450/- is disallowed on pro-rata basis. Thus addition to the tune of Rs.13,61,450/- is being made to the taxable income of the assessee. Penalty proceeding u/s 271(1)(c) for furnishing inaccurate particulars/concealment of the income are being initiated separately on this issue.”

Aggrieved by the order passed by the AO, the assessee filed appeal before the Id. CIT(A). The Id. CIT(A) however deleted the impugned disallowances with the following observations:

“9. After considering rival contentions and perusing material on record, I find that the following expenses have been claimed under the head “financial expenses”

Bank charges:	61,324/-
Interest on working capital:	13,26,005/-
Interest on terms loan:	18,800/-
Interest others:	18,645/-
Interest on hire purchase car loan:	46,329/-
Interest on unsecured loan:	Nil
Total	14,69,103/-

10. The AO has nowhere in his order established that the appellant company had raised interest bearing loan and diverted them to partners/parties without charging interest.

11. I further find that Rs.3,11,22,866/- was financed by the company from self sources without any cost i.e. Rs.90,50,000/- were raised through unsecured loans during the year, Share capital of Rs.5,11,56,000/- Reserve and Surpluses of Rs.1,10,13,825/- totalling to Rs.7,12,19,825 - Rs.3,11,22,866/-) as on 31.3.2006.

12. It is evident from record that the amount of Rs.3,11,22,866/- includes sundry debtors of Rs.42,01,115/- duly accounted in the sundry debtors of Rs.2,53,03,064/- and Rs.49,38,930/- is recoverable against sale of land and building from Shri A.S.Bhatia. The major component of Rs.2,19,82,821/- is an advance for setting up Biotechnology Plant at Dera Bassi to subsidiary company.”

Aggrieved by the order passed by the Id. CIT(A), the revenue went in appeal and the Tribunal observed that a sum of Rs.49,38,930/- was given as interest-free loan to Shri A.S. Bhatia, maternal uncle of the

Managing Director of the assessee-company and a sum of Rs.2,19,82,821/- was given as unsecured loan to Punjab Biotechnology Plant Ltd., a sister concern of the assessee-company. The Tribunal further observed that Shri A.S.Bhatia, was the maternal uncle and the assessee-company itself treated the amount standing in his name as loan given by the assessee to him. The auditors of the assessee-company had treated this loan as prejudicial to the interest of the assessee. The opinion of the auditors was that the action of the assessee in giving interest-free loans to Shri A.S.Bhatia was not guided by any business consideration. The amount recoverable from Shri A.S. Bhatia on sale of property was not recovered. No interest was charged by the assessee from Shri A.S. Bhatia. The Tribunal held that the amount standing in the name of Shri A.S. Bhatia was in the nature of loan advanced by the assessee to him without any commercial expediency and if the assessee-company had not diverted the funds to Shri A.S. Bhatia for non-business consideration, they would have been available with the assessee-company for its business purposes and to that extent, it would not have necessary to borrow from bank and pay interest thereon. By referring to the judgment passed by this Court in ***CIT Vs. Abhishek Industries Ltd., 261 ITA (PH)***, the Tribunal held that the interest attributable to a sum of Rs.49,38,930/- being diverted by the assessee-company for the personal benefit of Shri A.S. Bhatia was liable to be disallowed.

With respect to the amount standing in the name of Punjab Biotechnology Plant Ltd., since it was a subsidiary of the assessee-company and the amount was given for the joint collaboration to which even the assessee was a party for its development. The loan standing in the name of Punjab Biotechnology Plant Ltd. was held to be guided by business

expediency. Hence, the Tribunal directed the Assessing Officer not to disallow any interest attributable to the loans given by the assessee-company to the said subsidiary company.

The instant appeal was admitted on 20.07.2012, only for considering the following substantial question of law:-

“Whether in the facts and circumstances of the case the ITAT was right in law in applying the ratio of this Hon'ble Court in the case of *CIT Vs. Abhishek Industries 286 ITR Page 1* when no diversion of interest bearing funds had been made to Shri A.S.Bhatia?”

Learned counsel for the appellant has referred to the judgment passed by Hon'ble Supreme Court in *Civil Appeal No. 514 of 2008 titled Hero Cycles (P) Ltd. Vs. Commissioner of Income Tax (Central), Ludhiana*. In the said case, the Hon'ble Supreme Court had examined the advance/loan given to the Directors. The assessee-company had reserve/surplus of almost Rs.15 crores and it had given loan of Rs.34 lacs to its Directors @ 10% and it had no bearing on the loan taken by the Hero Cycles from the bank for its business transaction. Therefore the interest liability of the assessee towards the bank on the borrowing which was taken by the assessee had no bearing because the assessee had sufficient funds of its own which the assessee could have advanced and it was for the Assessing Officer to establish a nexus between the borrowing and advancing to prove that expenditure was for non-business purposes. With respect to the loan given to the Directors, the assessee had claimed deduction of interest which was allowed by the Hon'ble Supreme Court. With this observation, the Hon'ble Supreme Court allowed the appeal and

the judgment of the High Court in ***Commissioner of Income Tax-I, Ludhiana vs. M/s. Abhishek Industries Limited, Ludhiana (ITA No. 110/2005 decided on 04.08.2006)*** was over-ruled.

As regards amount given to the sister concern, the issue in the present case does not need to be examined as even in the present case, the issue with respect to money given to the sister concern-Punjab Biotechnology Plant Ltd. has already attained finality in ***Hero Cycles 's case (supra)***. However, with respect to loan given to Shri A.S. Bhatia, the issue has been considered by the Hon'ble Supreme Court in ***Hero Cycles 's case (supra)*** as loan of Rs.34 lacs was given to the Directors when the credit balance was Rs.15 crores and this amount did not effect the business transaction carried out by the company after taking loan from the bank. The question of liability has already been answered in favour of the assessee by the Supreme Court in ***Hero Cycles's case (supra)*** wherein the judgment passed in '***Abhishek Industries***' (*supra*) has been overruled. The judgment of Hero Cycles's case (*supra*) has, thereafter, been followed by this Court in ***Principal Commission of Income Tax vs. Holy Faith International (P) Ltd, ITA No. 87 of 2017, decided on 24.07.2017*** and the benefit of interest was allowed under Section 36(1)(iii) by this Court. In paras No. 7, 8, 9 and 10, it was observed as under:-

“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), in favour of the assessee by holding as follows:

“XXXXXXXXXXXX.

Assessee had a credit balance in the bank account when the said advance of Rs. 34 lakhs was given. Company had reserve/surplus to the tune of Rs. 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 Id. 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.”

Keeping in view the above observations, the appeals filed by the assessee-companies are allowed. Order dated 13.05.2011 (Annexure A-4) passed by the Tribunal is set aside and the order dated 30.04.2010 passed by the CIT(A) is restored. A direction is given to the Assessing Officer to recompute the disallowance as per the judgment passed in *Hero Cycles's case (supra)* and *Holy Faith International (P) Ltd.'s case (supra)*.

(RITU BAHRI)
JUDGE

16.02.2023

Divyanshi

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No