HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-8521-2018
Date of decision: 09.02.2023

Pr. Commissioner of Income Tax-I, Jalandhar ....Appellant

V/s.

M/s. Max India Limited ....Respondent

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

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

Mr. Neeraj Kumar Jain, Advocate with
Mr. Vishal Gupta, Advocate and
Ms. Manisha Sharma, Advocate
for the respondent.

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Ritu Bahri, J.

This order shall dispose of three income tax appeals i.e. ITA Nos. 8521-2018, 8527-2018 and 20-2019 as the issue involved in all the appeals is identical. For the sake of brevity, facts are being extracted from ITA-8521-2018.

The revenue has come up in appeal against the order dated 29.06.2018 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (in short 'the Tribunal) whereby the appeals filed by the revenue against orders dated 18.08.2015, 17.08.2015, 13.06.2016, 17.06.2016 and 16.08.2017 relevant to the assessment years 2008-09 & 2009-10, 2011-12 & 2012-13 & 2013-14 respectively, have been dismissed.

The main issue involved in all the appeals relate to disallowance of interest under Section 36(1)(iii) of the Act made by the Assessing Officer which was deleted by the Ld. CIT(A) while relying upon order dated 19.03.2013 passed by the ITAT Amritsar Bench in ITA No. 274 (Asr)/2012 relevant to the assessment year 2008-09 whereby the Coordinate Bench at Amristar while relying upon its own orders relevant to the assessment year 2001-02 to 2006-07 dated 08.03.2013 deleted the disallowance under Section 36(1)(iii) of the Act on the grounds that company had sufficient surplus interest free funds and the loans had been given out of the surplus interest free funds available for the commercial expediency and, therefore, no part of interest expenditure warranted disallowance under Section 36(1)(iii) of the Act.

Learned counsel for the appellant states that the impugned order passed by the Tribunal was based upon the order dated 19.03.2013 passed by the ITAT Amritsar Bench in ITA No. 274 (Asr)/2012 relevant to the assessment year 2008-09. This order was challenged by the revenue in ***ITA-219-2013 titled as Commissioner of Income Tax, Jalandhar-I, Jalandhar vs. M/s. Max India Limited***, and the Division Bench of this Court had dismissed the appeal and affirmed the findings given by the Tribunal vide order dated 08.03.2017. While dismissing the appeal, it was observed that the assessee who was deriving its income from manufacturing and marketing of biaxially oriented polypropylenes (BOPP) films, a flexible packaging material, had advanced interest free loans to three sister concerns/subsidiaries. There was no nexus of interest expenditure incurred during the year with the loan/advances given to the subsidiary companies warranting disallowance under Section 36(1)(iii) of the Act and the deletion of disallowance of interest expenditure as held by the Tribunal was upheld. In para Nos. 5 and 6, the Division Bench has observed as under:-

"5. With regard to the first issue qua disallowance of interest expenditure under section 36(1)(iii) of the Act, admittedly, the assessee company had given interest free loans and advances amounting to Rs.2297.83 lacs upto the end of the relevant year including Rs.704 lacs during the relevant year to its three subsidiary companies. The Assessing officer did not make any disallowance in respect of expenditure incurred on borrowed funds under section 36(1)(iii) of the Act in relation to interest free loans and advances given to the said three subsidiary companies in the earlier years. After perusing the cash flow statement of the assessee company for the assessment year in question, the Tribunal observed that the assessee company had received substantial proceeds from preferential issue of shares capital amounting to Rs.99999.98 lacs. It had also received dividend income of Rs.166.13 crores from various investments. 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. Thus, there was no nexus of interest expenditure incurred during the year with the aforesaid loans/advances given to the subsidiary companies, warranting disallowance under section 36(1)(iii) of the Act. After considering the relevant provisions and the case law on the point, the Tribunal deleted the disallowance of interest expenditure made under section 36(1)(iii) of the Act. The relevant findings recorded by the Tribunal read thus:-

"25. We have perused the cash flow statement of the assessee company for the assessment year under consideration and it is observed that during the relevant year, the assessee company had received substantial proceeds from preferential issue of shares capital aggregating to Rs. 99999.98 lacs and it also received dividend income of Rs. 166.13 crores from various investments. The assessee company also provided a summary of cash flow statement for the impugned year wherein after considering the interest free funds and application thereof towards various investments made in subsidiary companies, in mutual funds and aforesaid interest free loans of Rs.7.04 crores given to subsidiary companies, the assessee is left with surplus interest free funds of Rs.53.86 crores. The aforesaid establishes that interest free funds available with the assessee were sufficient for the aforesaid investments and interest free advances which has not been disputed by the AO or the learned CIT(A). We have already held that the assessee company for the assessment years 2001-02 to 2006-07 in our order dated 8.3.2013 that in case of mixed pool funds, presumption should be drawn in favour of the assessee regarding utilization of interest free funds or borrowed funds in a manner which is most favourable to the assessee company. In view of the same, it is to be presumed that interest free funds available with the assessee company during the impugned year were utilized for giving interest free advances of Rs.7.04 crores given to the subsidiary companies and therefore, there is no nexus of interest expenditure incurred during the year with the aforesaid loans/advances given to the subsidiary companies, warranting disallowance under section 36(1)(iii) of the Act. 26. As regards interest free advances given by the assessee company to the subsidiary companies in earlier years, it was submitted with reference to overall fund flow position that the aforesaid loans and advances were given out of surplus interest free funds available with the assessee company in those years and consequently no part of the interest expenditure warrants disallowance under section 36(1)(iii) of the Act. Although, we have decided in the appeals of the assessee company for the assessment years 2001-02 to 2006-07 (supra) in the context of disallowance of interest expenditure under section 14A of the Act and observed that the assessee company had sufficient surplus interest free funds to make investments, however, without going into the issue whether such funds were sufficient to cover up interest free advances in those years, which prima facie appears to be available, we are of the view that since no disallowance of interest expenditure attributable to the interest free loans/advances given to the subsidiary companies was made under section 36(1)(iii) of the Act, in those years, it was not open to the Assessing Officer to make such disallowance in the succeeding assessment year. We draw support for the aforesaid decision from the judgments of the Hon'ble Karnataka High Court in the case of *CIT vs. Sridev Enterprises reported in 192 ITR 165* and the decision of the Hon'ble Delhi High Court in the case of *CIT vs. Givo Limited* in ITA

No.941/2010. In that view of the matter, having held that the borrowed funds had no nexus with interest free advances given to the subsidiary companies in earlier years (on account of no disallowance having been made in the assessment of earlier years) and during the relevant assessment year (on account of positive overall cash flow statement of the relevant year), it is not necessary to go into the issue whether interest free advances given by the assessee company to the subsidiary companies was on account of commercial expediency or not. We are not in agreement with the observations of the learned CIT(A) that in all cases, it is required to be seen whether loan was given for the business purposes or not and not the source from which the loans is given. We are of the view that only if on facts, it is clear that loans/advances have been made out of interest bearing borrowed funds that the alternative plea for contesting disallowance under section 36(1)(iii) that loan was given on account of commercial expediency will have relevance. In view of the aforesaid discussions, the disallowance of interest expenditure made under section 36(1)(iii) of the Act is directed to be deleted and this ground of the assessee is allowed."

Learned counsel for the appellant has not been able to show that the findings recorded by the Tribunal are illegal or perverse warranting interference by this Court.

6. With regard to the second issue regarding expenditure related to exempt income, the same is covered by the decision of this Court in the case of the assessee in *Commissioner of Income*

Tax, Jalandhar I, Jalandhar vs. M/s Max India Limited, ITA No.186 of 2013, decided on 6.9.2016, wherein after considering the relevant case law on the point, the issue was decided in favour of the assessee and it was recorded thus:-

"9. This presumption is unfounded. Merely because the interest free funds with the assessee have decreased during any period, it does not follow that the funds borrowed on interest were utilized for the purpose of investing in assets yielding exempt income. If even after the decrease the assessee has interest free funds sufficient to make the investment in assets yielding the exempt income, the presumption that it was such funds that were utilized for the said investment remains. There is no reason for it not to. The basis of the presumption as we will elaborate later is that an assessee would invest its funds to its advantage. It gains nothing by investing interest free funds towards other assets merely on account of the interest free funds having decreased. In that event so long as even after the decrease thereof there are sufficient interest free funds the presumption that they would be first used to invest in assets yielding exempt income applies with equal force."

Learned counsel for the appellant-revenue has not been able to distinguish the aforesaid decision taken by this Court."

Against the judgment dated 08.03.2017 passed by this Court in ***ITA-219-2013 titled as Commissioner of Income Tax, Jalandhar-I, Jalandhar vs. M/s. Max India Limited***, SLP (C) 024039 of 2017 had been dismissed on 06.01.2020.

In the present case, the order passed by the Tribunal dated 19.03.2013 for the assessment year 2008-09 was made basis to dismiss the appeals filed by the revenue. Since the order dated 19.03.2013 was upheld by this Court while dismissing the ITA-219-2013 on 08.03.2017 and even SLP (C) 024039 of 2017 had been withdrawn on 06.01.2020, no substantial question of law remains to be decided in these appeals.

Appeals are dismissed.

(RITU BAHRI)
JUDGE

09.02.2023
Divyanshi

(MANISHA BATRA)
JUDGE

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