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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ITA 664/2023**

PRINCIPAL COMMISSIONER OF INCOME
TAX 7 DELHI

..... Appellant

Through: Mr. Sunil Agarwal, Sr. SC with
Mr. Shivansh B. Pandya, SC
and Mr. Utkarsh Tiwari, Adv.

Versus

UNIPARTS INDIA LTD. Respondent

Through: Mr. Mayank Nagi and Mr.
Tarun Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR
KAURAV

% **ORDER**
02.02.2024

CM APPL. 61111/2023 (Ex.)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

CM APPL. 61110/2023 (Delay)

3. This is an application filed by the appellant seeking condonation of 44 days delay in filing the present appeal.
4. For the reasons stated in the application, the delay of 44 days in filing the appeal is condoned.
5. Application is disposed of.

ITA 664/2023

6. The instant appeal is directed against the order of the Income Tax Appellate Tribunal [“ITAT”] dated 28 February 2023 and which



has while considering the issue of disallowance of interest framed under Section 36(1)(iii) of the Income Tax Act, 1961 [“Act”] proceeded to adopt the decision rendered by it for Assessment Year [“AY”] 2009-2010.

7. According to Mr. Agarwal, learned counsel appearing for the appellant, the ITAT has clearly erred in proceeding along the aforesaid line failing to bear in mind that insofar as the AY 2009-2010 is concerned the loans and advances made to the subsidiary were from the own capital of the assessee. Contrary to the above, Mr. Agarwal points out that for the AY in question the authorities have found that while the assessee had obtained loans from various financial institutions at a higher rate of interest, it had provided credit facilities to its wholly owned subsidiaries at a lower rate.

8. It was on the aforesaid basis, that the Assessing Officer [“AO”] proceeded to make a computation of disallowance in the following terms:

“4.3 Considering the interest received (@6% P.A.) from subsidiary i.e. Rs. 43,34,264/- and adopting an interest rate @ 16%, the shortage in interest recovered from subsidiary works out to Rs. **1,41,63,945/-** (2,15,15,562-**73,51,617**) and the same is disallowed out of interest expenses of Rs. 13 .89 crores and is added back to the returned income.”

9. One of the other submissions, which was addressed by Mr. Agarwal was a failure on the part of the assessee to show that the wholly owned subsidiary was in the same line of business or would be said to qualify the prerequisites of the benefits which would flow from Section 36(1)(iii) of the Act.

10. Insofar as the last submission is concerned, we note that the



aforesaid aspect was extensively spoken upon by the assessee as would be evident from the following discussion which appears in the order passed by the Commissioner of Income Tax (Appeals) [“CIT(A)”] dated 23 January 2017:

“5.2 During the appellate proceedings, Ld. AR has filed written submissions. Main arguments of the Ld. AR are as under:-

(i) The appellant and its 100% subsidiary namely M/s Unilink Engineering Pvt. Ltd. engaged in same business of manufacturing of tractor parts and accessories.

Considering the appellant has 100% shareholdings, the subsidiary is completely dependent on the appellant for meeting its capital requirements. The Subsidiary is incurring heavy loss in its business over the last few years due to heavy capitalization in machineries and equipments. During the year under consideration the appellant has extended a loan of Rs. 1,53,16,455/- @ 6% per annum. As the subsidiary has utilized the funds for the purpose of its business.

(ii) Ld. AR has relied on the decision of Apex Court in the case of **S.A. Builders vs. CIT (A) [2007] 288 ITR 1(SC)**. Ld. AR has argued that in present case is on better footing as in the case of S. A. Builder assessee has not charged any interest from its subsidiary. In present case, the assessee is charging interest @ 6% from its subsidiary. Ld. AR has argued that the ruling of SC is squarely applicable of the case.

(iii) The judgment of Hon’ble SC in the case of S.A. Builders has been constantly followed in various decisions view of them are cited as under:-

- **Hero Cycles vs. CIT [2015] 63 taxmann.com 308 (SC)**
- **CIT vs. Dalmia Cement Bharat Ltd. [2009] 183 Taxman 422 (Delhi)**
- **CIT vs. Bharti Televenture Ltd. [2011] 11 taxmann.com 356 (Delhi)**
- **Bright Enterprises (P.) Ltd. CIT [2015] 61 taxmann.com 73 (Punj. & Har.)**
- **CIT vs. Reliance Communications Infrastructure Ltd. [2012] 21 taxmann.com 118 (Bom.)**

5.3 Decision

I have considered the Assessment Order, written submission and oral argument of the Ld. AR carefully.

I agree to the arguments of the Ld. AR that issue is covered by the rulings of Hon’ble Supreme Court in the case of S.A. Builders cited supra. The relevant portion of ruling of Hon’ble Supreme Court is reproduced as under:-



"In this connection we may refer to section 36 (1) (iii) of the Income-tax Act, 1961(hereinafter referred to as the 'Act') which states that "the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession" has to be allowed as a deduction in computing the Income-tax under section 28 of the Act.

20. In *Madhav Prasad Jatia v. CIT* AIR 1979 SC 1291, this Court held that the expression "for the purpose of business" occurring under the provision is wider in scope than the expression "for the purpose of earning income, profits or gains", and this has been the consistent view of this Court.

22. In our opinion, the decisions relating to section 37 of the Act will also be applicable to section 36(1)(iii) because in section 37 also the expression used is "for the purpose of business". It has been consistently held in decisions relating to section 37 that the expression "for the purpose of business" includes expenditure voluntarily incurred for commercial expediency, and it is immaterial if a third party also benefits thereby.

23. Thus in *Atherton v. British Insulated & Helsby Cables Ltd.* [1925] 10 TC 155, it was held by the House of Lords that in order to claim a deduction, it is enough to show that the money is expended, not of necessity and with a view to direct and immediate benefit, but voluntarily and on grounds of commercial expediency and in order to indirectly to facilitate the carrying on the business. The above test in *Atherton's case*, (supra) has been approved by this Court in several decisions e.g. *Eastern Investments Ltd. v. CIT* [1951] 20ITR 1. *CIT v. Chandulal Keshavlal & Co.* [1960] 381TR 601 etc.

25. The expression "commercial expediency" is an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation, but yet it is allowable as a business expenditure, if it was incurred on grounds of commercial expediency.

34. We agree with the view taken by the Delhi High Court in *CIT v. Dalmia Cement (Bharat) Ltd.* [2002] 254 ITR 377 2 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*

35 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.”

The above decision of Hon’ble SC has been followed by various judicial authorities in subsequent decisions. The facts of the case are recovered by the decision of Hon’ble Supreme Court as in present case also the appellant, has made a business advanced to its 100% subsidiary which was incurring at huge loss. Accordingly, following Hon’ble Supreme Court in the case of S. A. Builders I direct, the AO to delete the addition. This Ground of Appeal are allowed.”

11. We thus note that while it is true that the ITAT has proceeded to adopt the decision rendered by it and referable to AY 2009-2010 on an overall consideration of the facts which stood placed before the CIT (A) the deletion of the benefits that were claimed would not be sustained.

12. So far as question B pertaining to Section 14A of the Act is concerned, Mr. Agarwal fairly concedes that the same is liable to be answered against the Revenue in light of the decision rendered in **PCIT v. Era Infrastructure (India) Ltd.** [2022 SCC OnLine Del 2157].



13. Consequently, and for the aforesaid reasons, we find no merit in the appeal. The appeal shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 02, 2024/p