IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1)

I.T.R. No.24 of 2000.
Assessment Year:-1985-86.
Decided on:-December 20, 2013.

The Commissioner of Income Tax, Jalandhar. .....Applicant.

Versus

M/s Kakker Complex & Steels Pvt. Ltd., Jalandhar. .....Respondent.

(2)

I.T.A. No.251 of 2003 (O&M).
Assessment Year:-1987-88.

The Commissioner of Income Tax, Jalandhar-II, Jalandhar. .....Appellant.

Versus

M/s Kakkar Complex Steels (P) Ltd., Jalandhar. .....Respondent.

CORAM: Hon'ble Mr. Justice Rajive Bhalla
Hon'ble Mr. Justice Dr. Bharat Bhushan Parsoon.

*****

Argued by:- Mr. Vivek Sethi, Advocate
for the applicant-appellant.

Mr. Pankaj Jain, Advocate and
Mr. Divya Suri, Advocate
for the respondent.

Dr. Bharat Bhushan Parsoon, J

This Income Tax Reference No.24 of 2000 is pursuant to judgment dated 28.5.1996 of this Court. Following questions of law are

Yag Dutt
2013.12.24 13:52
I attest to the accuracy and
integrity of this document

This is a True Copy of the court records online. Authenticated @ https://eCourtsIndia.com/cnr/PHHC010364382000/truecopy/order-1.pdf

required to be answered:

> "(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in allowing the deduction of interest of Rs.80,915/- relating to the advance of Rs.12.25 lacs?
>
> (ii) Whether, on the facts and in the circumstances of the case and the material on record, the findings of the Tribunal that the amount of Rs.12.25 lacs had been advanced by the assessee for its business purpose and that no interest on that amount was paid to the bank are perverse?"

2. In appeal No.251 of 2003 filed by the revenue, order of 27.6.2003 of the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as, the Tribunal) passed in ITA No.318(ASR)/1996 for the assessment year 1987-88 is also under challenge. This appeal vide order dated 20.1.2004 of this Court was admitted to be heard along with ITR No.24 of 2000.

3. For convenience and clarity, facts have been taken from ITR No.24 of 2000.

4. The assessee is a manufacturer of mild steel. For the assessment year 1985-86, it had filed its return declaring loss of Rs.11.62 lacs. In the revised return, total loss was increased to Rs.11,89,080/-. The assessment, however, was completed on 29.3.1988 under Section 143(3) of the Income Tax Act, 1961 (for short, the Act) at a total loss of Rs.5,71,712/-.

5. The Assessing Officer (hereinafter referred to as, the AO) had disallowed a sum of Rs.80,915/- out of the interest paid by the assessee on its cash credit account being interest @ 18% on advance of Rs.12.25 lacs given by the assessee to M/s Hindustan Brown Boveri Limited for the purpose of purchase of electric furnace which was ultimately purchased by M/s Seth Hari Chand & Sons Private Limited and not by the assessee. This order was unsuccessfully challenged by the assessee. Order of the

Yag Dutt
2013.12.24 13:52
I attest to the accuracy and
integrity of this document

This is a True Copy of the court records online. Authenticated @ https://eCourtsIndia.com/cnr/PHHC010364382000/truecopy/order-1.pdf

Commissioner of Income Tax (Appeals)-I, Jalandhar [hereinafter referred to as, the CIT(A)] is of 8.12.1988. In the second appeal filed by the assessee, the Tribunal had reversed the decision of the CIT(A), holding, that the departmental authorities were not justified in sustaining the disallowance. Though petition of the revenue for making reference under Section 256(1) of the Act before the Tribunal was rejected but petition of the revenue made under Section 256(2) of the Act before this Court against this decision of the Tribunal declining reference was accepted and the reference was, consequently, made as has been noticed earlier.

6. Claim of the revenue is that deletion of the disallowance of Rs.80,915/- on account of interest by the Tribunal was neither tenable on facts nor in law as the interest was paid to the bank on advance made to vendor of the electric furnace which was neither purchased nor utilised for the purpose of business of the assessee. In short, it is claimed that when interest was paid on advance made to the vendor for purchase of furnace which was not for the purpose of assessee's business, deletion by the Tribunal was unsustainable. Order of the Tribunal is claimed to be perverse and lacking proper appreciation of facts and evidence.

7. Plea of the assessee, on the other hand, is that neither any loan was taken for purchase of the furnace nor any interest was paid to the bank on this count and further that interest was paid only in the cash credit account which was running account and was operated as also used for the business of the assessee.

8. We have heard counsel for the parties while going through the paper book.

9. It is a conceded fact that during the previous year relevant to the assessment year 1985-86, the assessee had paid through in driblets, a sum of Rs.12.25 lacs to M/s Hindustan Brown Boveri Limited for purchase of an

Yag Dutt
2013.12.24 13:52
I attest to the accuracy and
integrity of this document

This is a True Copy of the court records online. Authenticated @ https://eCourtsIndia.com/cnr/PHHC010364382000/truecopy/order-1.pdf

induction furnace. It is admitted that a sum of Rs.80,915/- as interest calculated @ 18% per annum had been paid to the bank on this account. In fact, in the return furnished by the assessee, this amount of interest had been sought as a deduction. Neither before the AO nor before either of the appellate authorities, it could be denied by the assessee that the furnace was neither purchased by the assessee nor was used for its business. It is an admitted fact that it was purchased by M/s Seth Hari Chand & Sons Private Limited and was utilised by the said concern only. Even then, the assessee had not recovered this amount of interest (paid to the bank qua advance of sale price given to the vendor) after debiting its cash credit account with the bank. Not only the AO but even the CIT(A) had very clearly and categorically disallowed interest amount of Rs.80,915/-. The CIT(A) affirming the disallowance of Rs.80,915/- on account of interest paid for purchase of electric furnace, had observed as under:

> *"I have gone through the evidence on record and the rival arguments. In spite of the arguments of the appellant, the fact remains that the bank loan account was used by the appellant for making advance of Rs.12.25 lakhs to M/s. Hindustan. Merely because the bank gave the amount to the appellant on the security of hypothecation of stocks, it does not cease to be a loan; the appellant has duly paid normal rate of bank interest on the amount drawn from the cash credit account. A loan is nothing but receipt of money on payment of interest. Thus, it has to be held that the appellant has raised a loan from the bank on payments of interest and the loan amount was not utilized for the purposes of business of the appellant. The fact that the bank loan was reduced from Rs.45.66 lakhs to Rs.36.18 lakhs is immaterial, its only significance being that during the year under consideration, especially, on the last date of the accounting period, the appellant required less finance than earlier. It does not mean that Rs.12.25 lakhs does not form part of loan of Rs.36.18 lakhs. This can be made clear by considering the non-existence of this payment of Rs.12.25 lakhs to M/s Hindustan. Had this payment been made, then the appellant's loan account would have shown overdraft of less than Rs.24 lakhs and this would have meant, lesser payments of interest to the bank. Thus, the current year's profit have been*

Yag Dutt
2013.12.24 13:52
I attest to the accuracy and
integrity of this document

This is a True Copy of the court records online. Authenticated @ https://eCourtsIndia.com/cnr/PHHC010364382000/truecopy/order-1.pdf

> *affected by drawing Rs.12.25 lakhs from the bank account on payment of interest. I am, therefore, in agreement with the A.O.'s reasoning and hold that the interest to the extent of Rs.80,915/- has to be disallowed out of interest payments on the grounds given in the assessment order."*

10. The Tribunal without meeting the grounds taken by the AO for disallowance of such interest amount went on completely different and non-existent facts and then wrongly came to the conclusion that neither any advance had been taken nor any interest had been paid. The Tribunal had clearly ignored an admission of the assessee where it had claimed deduction of Rs.80,915/- out of the interest paid by it on its cash credit account, clearly reciting that such part i.e. Rs.80,915/- out of total interest had been paid to the bank @ 18% on advance sale price paid to the vendor of electric furnace by the assessee. Referring to Sections 36 and 43 of the Act in ***Deputy Commissioner of Income Tax Versus Core Health Care Limited*** reported as ***[2008] 298 ITR 194 (SC)***, Hon'ble Supreme Court of India had held that for allowance of a claim of interest, the following requirements must be complied with:

(1) Capital must have been borrowed by the assessee;

(2) It must have been borrowed for the purpose of business of the assessee; and,

(3) The assessee must have paid interest on the borrowed amount.

11. Applying this test, it is to be seen that as per the return furnished by the assessee, the money was borrowed by it and interest was also paid to the bank where the assessee was maintaining its cash credit account. The assessee had claimed deduction of Rs.80,915/- on account of interest paid for the borrowing made for advance paid to the vendor of electric furnace.

12. It has sufficiently come on record that notwithstanding the fact

Yag Dutt
2013.12.24 13:52
I attest to the accuracy and
integrity of this document

This is a True Copy of the court records online. Authenticated @ https://eCourtsIndia.com/cnr/PHHC010364382000/truecopy/order-1.pdf

of advance having been made by the assessee after borrowing from its banker, neither the electric furnace was purchased by the assessee nor was utilised for the purpose of its business. In fact, the said furnace was purchased by M/s Seth Hari Chand & Sons Private Limited and was utilised by the said vendee alone. It is, thus, evident that findings of the Tribunal that an amount of Rs.12.25 lacs had been advanced by the assessee for its business purpose and that no interest on that amount was paid to the bank, being against the facts and own admission of the assessee, in the entirety of facts and circumstances, are perverse.

13. Sequelly, the Tribunal was wrong in allowing the deductions of interest of Rs.80,915/- on that count and was also wrong in reversing the order of CIT(A) which had affirmed order dated 29.3.1988 of the AO.

14. Resultantly, the reference made to this Court with regard to both these questions is answered in favour of the revenue and against the assessee. Sequelly, the appeal of the revenue is also allowed.

(Dr. Bharat Bhushan Parsoon)
Judge

(Rajive Bhalla)
Judge

December 20, 2013
'Yag Dutt'

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Yag Dutt
2013.12.24 13:52
I attest to the accuracy and
integrity of this document

This is a True Copy of the court records online. Authenticated @ https://eCourtsIndia.com/cnr/PHHC010364382000/truecopy/order-1.pdf