

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

Date of Decision : 07.05.2013

**ITA No.225 of 2004**

Commissioner of Income Tax ...Appellant

Versus

M/s Southern Bottlers Pvt. Ltd. ...Respondent

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA  
HON'BLE MS. JUSTICE RITU BAHRI**

Present : Ms. Savita Saxena, Advocate,  
for the appellant.

M/s Akshay Bhan & Aalok Mittal, Advocates,  
for the respondent.

**HEMANT GUPTA, J.**

The present appeal under Section 260A of the Income Tax Act, 1961 (for short 'the Act') arises out of an order passed by the Income Tax Appellate Tribunal, Chandigarh (for short 'the Tribunal') on 24.03.2004 for the assessment year 1989-90. The Revenue has raised the following substantial questions of law:

“(i) Whether on the facts and in the circumstances of the case, the ITAT was right in law in holding that excess of 'security deposits' over refunds received by the assessee on sale of bottles is not a trading receipt?

(ii) Whether on the facts and in the circumstances off the case, the ITAT was right in law in deleting the addition made on account of interest on interest free loans advanced by the assessee-company to its directors and sister concerns?”

Question No.1 is the question of law in ITR No.30 of 1994 titled 'The Commissioner of Income Tax (Central), Ludhiana Vs. Munjal

Gases, Hero Nagar, Ludhiana' decided on 29.04.2013. For the reasons recorded in Munjal Gases case (supra), question No.1 is answered against the Revenue and in favour of the assessee.

In respect of question No.2, the learned Assessing Officer found that the assessee paid interest to the Banks amounting to Rs.13,64,522/- and has availed loans to the extent of Rs.60,22,364/- including secured loans of Rs.47,63,761/- from Punjab & Sind Bank and Rs.8,59,298/- from Andhra Bank. It was found that the assessee has advanced certain loans to its Directors and also to some Companies under the same Management free of interest. The amount due as on 31.03.1989 is almost equal to the amount of loans taken from the Bank. The Assessing Officer, thus, found that almost the same amount taken from the Banks on which interest was paid by the assessee was advanced to the Directors or sister concerns without charging any interest. The assessee is not a finance company and it is an industrial concern manufacturing soft drinks. Therefore, the amount of interest debited to the Profit & Loss A/c was disallowed.

In appeal, the learned Commissioner of Income Tax (Appeals) found that the assessee has borrowed interest free loan from the companies in which the Directors were interested to the extent of Rs.3,16,22,357/- and in case the assessee had charged the interest on its advances by the Directors and their companies, by applying the same rate of interest, the interest chargeable would have works out to be Rs.98,12,372/-. Thus, if the assessee had charged the interest on the advances to the Directors, they would have to pay interest on their borrowings also and the whole exercise would have resulted in further substantial loss to the company. Consequently, the

disallowance ordered by the Assessing Officer was set aside. It is the said order, which was affirmed by the Tribunal in further appeal.

Learned counsel for the Revenue relies upon a judgment of this Court in Commissioner of Income Tax Vs. Abhishek Industries Ltd. (2006) 286 ITR 1 to contend that the interest free loan advanced to the Directors or sister concerns from the borrowed funds will not entitle the assessee to claim expenses as business expenditure. Particular reference is made to the following observations:

“34. ....Once it is borne out from the record that the assessee had borrowed certain funds on which liability to pay tax is being incurred and on the other hand, certain amounts had been advanced to sister concerns or others without carrying any interest and without any business purpose, the interest to the extent the advance had been made without carrying any interest is to be disallowed under section 36(1)(iii) of the Act. Such borrowings to that extent cannot possibly be held for the purpose of business but for supplementing the cash diverted without deriving any benefit out of it. Accordingly, the assessee will not be entitled to claim deduction of the interest on the borrowings to the extent those are diverted to sister concerns or other persons without interest.”

Learned counsel for the Revenue also relied upon an order dated 14.10.2011 passed in ITA No.53 of 2003 titled “Commissioner of Income Tax, Ludhiana Vs. M/s Varinder Agro Chemicals Ltd.” to contend that the plea that loan was advanced to the sister concerns due to commercial expediency cannot be permitted to be raised in the present appeal for the first time.

On the other hand, learned counsel for the assessee relies upon Supreme Court judgment reported as S.A.Builders Ltd. Vs. Commissioner of Income Tax (Appeals) & another (2007) 288 ITR 1, wherein it has been held that the test in such cases is whether interest free loan to the sister

concerns is a measure of commercial expediency. Since there was no finding in respect of said aspect, the matter was remitted to the Tribunal. It is contended that the Commissioner of Income Tax (Appeals) having returned a finding that the Directors have given funds to the assessee, it is a case of commercial expediency in terms of ratio of the judgment in S.A.Builders Ltd. case (supra).

We have heard learned counsel for the parties at length and found that there is no clear and categorical finding recorded by the Commissioner of Income Tax (Appeals) or by the Tribunal in respect of commercial expediency of the advancement of interest free loan to the sister concerns or the Directors.

In M/s Varinder Agro Chemicals Ltd. case (supra), this Court has found that the assessee has taken a stand before the Assessing Officer that the advances were not made for business consideration. Therefore, the plea of commercial expediency was not available to the assessee in the said case.

Though the Commissioner of Income Tax (Appeals) has returned a finding that the Directors were interested in the assessee and advanced interest free loan to the assessee but the question; whether such Directors, who have advanced loan to the assessee, are also the Directors, who are beneficiary of interest free loan from the assessee, has not been examined. The commercial expediency cannot be mere availing of interest free loan from one assessee and giving interest free loan to another. The assessee in order to prove commercial expediency has to prove that it was a prudent act of a reasonable person in the trade to avail interest free loan and to advance interest free loan to some other persons. The assessee cannot be

inter-mediatory for availing and granting interest free loan. Since such question has not been examined, we deem it appropriate to set aside the orders of the Commissioner of Income Tax (Appeals) and that of the Tribunal and direct the Commissioner of Income Tax (Appeals) to examine the said question and decide the appeal on merits in accordance with law.

Disposed of accordingly.

(HEMANT GUPTA)  
JUDGE

07.05.2013  
Vimal

(RITU BAHRI)  
JUDGE