

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH; AMRITSAR.**

BEFORE SH. T. S. KAPOOR, ACCOUNTANT MEMBER
AND SH. N. K. CHOUDHRY, JUDICIAL MEMBER

I.T.A. No. 37/(Asr)/2016

Assessment Year: 2010-11

PAN: AAACF2467P

M/s. Freedom Industries Ltd. 435, Focal Point, Mehta Road, Amritsar. (Appellant)	Vs.	Asst. C. I. T., Circle-IV, Amritsar. (Respondent)
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Appellant by : Sh. Sudhir Sehgal

Respondent by: Sh. S. S. Kanwal (D. R.)

Date of Hearing: 05.10.2017

Date of Pronouncement: 03.01.2018

ORDER

PER T. S. KAPOOR (AM):

This is an appeal filed by assessee against the order of Ld. CIT(A), Amritsar, dated 06.10.2015 for Asst. Year: 2010-11.

2. The only grievance raised by assessee is the action of Ld. CIT(A) by which he has confirmed the disallowance of interest u/s 36(1)(iii) of the Act.

3. At the outset, the Ld. AR submitted that the Ld. CIT(A) has confirmed this addition by holding that the case law of Punjab & Haryana High Court in the case of Abhishek Industries Ltd. is applicable whereas the case of the Abhishek Industries Ltd. has now been overruled in Hero Cycles (P) Ltd. wherein it has been held that where there are sufficient non interest bearing funds which are more than interest free

advances then disallowance u/s 36(1)(iii) cannot be made. Reliance was further placed on the judgment of Punjab & Haryana High Court in the case of CIT Vs. M/s Holyfaith International Pvt. Ltd. and also on the case of Pr. CIT Vs. M/s Malhotra Book Depot wherein under similar facts and circumstances, it was held that if the interest free funds are more than interest free advances then presumption will arise that the interest free advances has been made out of interest free funds. The Ld. AR submitted that Ld. CIT(A) himself in his order has noted down that the funds available with the assessee amounted to 7,44,58,865/- against which a small amount was advanced as interest free advances. Therefore it was argued that the appeal of the assessee may be allowed.

4. The Ld. DR on the other hand submitted that no nexus was explained by assessee regarding the payment of advances with the interest free funds and assessee had directly transferred the money for advancing out of cash credit limit which itself means that current business funds of the assessee were used for making interest free advances and therefore the assessee had not made these interest free advances out of interest free funds. He submitted that the burden of interest would have been lower had the assessee charged interest from them and therefore Ld. CIT(A) had rightly confirmed the disallowance.

5. We have heard the rival parties and have gone through the material placed on record. We find that the authorities below has relied on the case of Abhishek Industries Ltd decided by Hon'ble Punjab & Haryana

High Court for confirming the disallowance u/s 36(1)(iii) of the Act. We further find that the said judgment of Punjab & Haryana High Court has been overruled in the case of Hero Cycle Pvt. Ltd. Vs. Commissioner of Income Tax wherein the Hon'ble Supreme Court of India has held that if the interest free funds available with the assessee are more than the interest free advances then the presumption will be made that assessee had utilized his own resources for making interest free advances. We further find that this issue has also been decided by Punjab & Haryana High Court in the case of M/s Holyfaith International Pvt. Ltd. and M/s Malhotra Book Depot Vs. Pr. CIT. For the sake of completeness, the findings of the Hon'ble Punjab & Haryana High Court in the case of Malhotra Book Depot are reproduced below:

“4. We have heard learned counsel for the parties.

*5. The matter has been considered by the Tribunal in detail. A perusal of the order passed by the Tribunal shows that the capital of the assessee company was Rs.31,71,64,888/- for the assessment year 2010-11. The investment in sister concerns in the shape of share application money was to the tune of Rs.20,32,60,000/-. The assessee was having current liabilities and profits to the tune of Rs. 17,41,39,750/-. The total non interests bearing funds available with the assessee were at Rs. 49,43,04,638/-. Out of the total funds on which no interest was paid by the assessee amounting to Rs. 49,43,04,638/-, the assessee had advanced Rs. 20,32,60,000/-. Thus, there was sufficient non-interest borrowing funds out of which the assessee had advanced/invested in sister concerns. It was further recorded that in the assessment year 2012-13 also, the assessee had sufficient interest free funds to make investment in the group companies relying upon the decision of the Apex Court in **Hero Cycle Private Limited Vs. Commissioner of Income Tax (Central)** 63 **Taxmann.com** 308 and **Commissioner of Income Tax-I, Ludhiana Vs. M/s Abhishek Industries Limited, Ludhiana**, (2006) 286 ITR 1(P&H). The Tribunal allowed the appeals filed by the assessee. The relevant findings recorded by the Tribunal read thus:-*

“9. We have heard the rival parties and have gone the material placed on record. We find that for Assessment year 2010-11 the capital of the assessee company was Rs. 31,71,64,888/- which is apparent from the

copy of balance sheet as placed in (PB-2). As against this the investments in sister concern in the shape of share application money as per paper book page 2 and as noted by Assessing Officer is Rs. 20,32,60,000/-. We further find that assessee was having current liabilities and profits to the tune of Rs.17,41,39,750/-, therefore, the total of non interests bearing funds available with the assessee were paid at Rs. 49,43,04,638/-. These figures are verifiable from the copies of balance sheet as placed in (PB page 2). Out of total available funds on which no interest was paid by assessee amounting to Rs. 49,43,04,638/-, the assessee had advanced ? 20,32,60,000/-, therefore, one fact is clear that in ITA No.196(ASR)/2015, there was sufficient non interest borrowing funds out of which the assessee had advanced/invested in the sister concerns.

10. Similarly, we find that for assessment year 2012-13 the capital of the firm as per balance sheet placed at (PB Page 3) was Rs. 13,21,61,500/- and the interest free current liabilities were to the tune off 91,20,514/- making the total availability of interest free funds to the tune off Rs. 104.58 crores. The assessee in this year had made investments in the group concerns as noted by Assessing Officer to the tune off Rs. 53.76 crores. Therefore, we find that in this year also the assessee had sufficient interest free funds to make investment in the group companies. Further we find that learned CIT(A) has followed the decision of Punjab & Haryana High Court in the case of Abhishek Industries and has further relied upon the decision of M/s Bright Enterprises Private Limited, decided by Amritsar Bench, we find that the decision of Bright Enterprises Private Limited has been overruled by Punjab and Haryana High Court. The findings of Hon'ble Punjab & Haryana High Court are reproduced below.

“Held, allowing the appeal, that whether the amount was debited to the account of the sister concern in respect of the payment made or whether the amount was actually paid to the sister concern and used by it for the purpose of business, was immaterial. Either way the amount was used for the business of the sister concern. It was not even suggested that the advance was used by the sister concern for the purpose other than for the purposes of its business. In the memorandum of appeal, the assessee expressly stated that it had advanced the amount to its sister concern as a measure of commercial expediency for the purpose of business. The assertion was never denied. The assessee owned about 89 per cent of the equity capital. When a holding company invested money for the purpose of the business of its subsidiary, it must necessarily be held to be an expense on account of commercial expediency. A financial benefit of any nature derived by the subsidiary on account of the amounts advanced to it by the holding company would not merely indirectly but directly benefit its holding company. There would be a direct benefit on account of advance made by the assessee to its sister company, if it improved the financial health of the sister company and made it a viable enterprise. But it was not necessary that the advance results in a positive tangible benefit. Thus, the assessee was entitled .to the deduction under Section 36(l)(iii) of the Income Tax Act, 1961.”

6. 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. Thus no substantial question of law arises. Consequently, both the appeals stand dismissed.”

Here in the present case it is an undisputed fact that the reserves and interest free funds of the assessee were much more than the advances and therefore following the above judicial precedent we allow the appeal of the assessee.

6. In nutshell, the appeal filed by assessee is allowed.

Order pronounced in the open court on 03.01.2018

Sd/-
(N. K. CHOUDHRY)
JUDICIAL MEMBER

Sd/-
(T. S. KAPOOR)
ACCOUNTANT MEMBER

Dated: 03.01.2018.

/GP/Sr. Ps.

Copy of the order forwarded to:

- (1) The Assessee:
- (2) The
- (3) The CIT(A),
- (4) The CIT,
- (5) The SR DR, I.T.A.T.,

True copy

By Order