

IN THE INCOME TAX APPELLATE TRIBUNAL  
“F” Bench, Mumbai  
Before Shri B.R. Baskaran (AM)& Shri Pawan Singh (JM)  
I.T.A. No. 5664/Mum/2016 (Assessment Year 2013-14)

ACIT 13(3)(1) Room No. 229 Aayakar Bhavan M.K. Road Mumbai-400 020. (Appellant)	Vs.	Shri Chetan R. Shah B-1601, Pratap Heritage LT Road, Borivali West Mumbai-400 092. PAN :APUPS9951D (Respondent)
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Assessee by	Shri Akash Kumar
Department by	Ms.Pooja Swaroop
Date of Hearing	12.06.2018
Date of Pronouncement	15.06.2018

O R D E R

Per B.R. Baskaran (AM) :-

The appeal filed by the Revenue is directed against the order dated 28.7.2016 passed by the learned CIT(A)-21, Mumbai and it relates to A.Y. 2013-14. The Revenue is aggrieved by the decision of the learned CIT(A) in deleting the disallowance of interest expenses of ₹ 61.36 lakhs made by the Assessing Officer.

2. Facts relating to the case are stated in brief. The assessee is engaged in the business of trading and investment in shares and securities. During the course of assessment proceedings the Assessing Officer noticed that the assessee has given interest free loan to a company named M/s. Setu Securities (P) Ltd. and did not charge interest thereon. The Assessing Officer noticed that the assessee had borrowed loans on which it was paying interest. Accordingly, the Assessing Officer asked the assessee to explain as to why interest relating to funds diverted to M/s. Setu Securities (P) Ltd. should not be disallowed. In response thereto, the assessee submitted that he is holding 51% shares in that company and hence it is his sister concern. He further submitted that the funds were given interest free to the above said company out of commercial

expediency, as it is carrying on very same business. The Assessing Officer was not convinced with the explanations furnished by the assessee and accordingly disallowed a sum of ₹ 61.36 lakhs out of interest expenditure. The learned CIT(A) allowed the same and hence the Revenue has filed this appeal before us.

3. The Learned DR submitted that the learned CIT(A) has deleted the disallowance by placing reliance on the decision rendered by Hon'ble Supreme Court in the case of S.A. Builders Ltd (288 ITR 1). The Learned DR submitted that Hon'ble Supreme Court has made clear in the said order that "business expediency" should be brought on record by the assessee before the tax authorities and then only, the interest expenditure could be allowed. The Learned DR submitted that the assessee did not bring on record any business expediency in advancing interest free loans to its sister concern. The Learned DR further submitted that the learned CIT(A) has also relied upon decision rendered by Hon'ble Supreme Court in the case of Hero Cycles (P) Ltd. Vs. CIT (379 ITR 347). However, in the above said case, the assessee therein proved existence of business expediency in advancing loan to its subsidiary company. The Learned DR further submitted that an identical issue was considered by Hon'ble High Court of Bombay in the case of Phaltan Sugar Works Pvt. Ltd. Vs. CIT (1994) (72 Taxamn 325), wherein Hon'ble Bombay High Court has held that business of subsidiary company cannot be considered in law as the business of the assessee. Accordingly, the learned DR submitted that the learned CIT(A) was not justified in deleting the impugned disallowance.

3. On the contrary, learned AR submitted that the assessee has demonstrated before the tax authorities that he was holding 51% shares in M/s. Setu Securities (P) Ltd. and said company is also engaged in share trading and finance, i.e., the very same business carried on by the assessee. Accordingly, learned AR submitted that the assessee was having interest in the growth of business of his sister concern and the same constitutes commercial expediency, as held by Hon'ble Supreme Court in the case of S.A Builders Ltd (supra). He further submitted that it is not a case of diversion of funds with the

purpose of avoiding tax as both the above said company and the assessee were making losses during the year under consideration. Accordingly, the learned AR submitted that the learned CIT(A) has deleted the impugned disallowance by considering the business expediency in making impugned advance to the sister concern and hence the order passed by him does not call for any interference.

4. We have heard the rival contentions and perused the record. We noticed that the learned CIT(A) has deleted the impugned disallowance with following observations :-

*4.3. I have considered the submissions and facts carefully. The appellant has shown income under the heads House Property, business and Income from other sources. The profit and loss account shows net loss of Rs 585 lakhs after claiming interest expenses of Rs 538 lakhs. The interest income is shown at Rs 107,63,689/- The assessing officer has disallowed interest expense based on the computation given by appellant in the assessment proceedings as per which the net interest paid of Rs 430,33,489/- was trifurcated as interest paid on debit balance and margin money in respect of two stock brokers with whom the appellant had carried out its share trading business and the balance as towards financing Setu Securities (P) Ltd. which is subsidiary company. The debit of interest to Bonanza Portfolio is a direct debit as interest paid/payable whereas the amount is estimated on proportionate basis for the other two entities out of interest paid to others. The assessing officer has held that the amount advanced to the subsidiary company is not for business purpose and hence interest apportioned for such use of borrowed funds has been disallowed.*

*4.4. The appellant holds 51% shares of Setu Securities (P) Ltd. The subsidiary company is also engaged in share trading and finance, as is the business of the appellant. The amount advanced to the subsidiary company has been used for same business as the appellant and not for any personal or non-business use. The Apex Court in the cases of S.A. Builders Ltd. and Hero Cycles P. Ltd. have upheld claim of interest expenses where funds are advanced to subsidiary company on account of commercial expediency. Setu Securities (P) Ltd. has also incurred loss of Rs 134 lakhs in AY 2013-14. Thus, there is no discernible tax avoidance in not charging interest to the subsidiary company as the net position would continue to be loss in the case of both appellant and the subsidiary company in both the situation when interest was charged or*

*not charged. In these facts, the disallowance of interest is deleted and the ground of appeal No. 1 is allowed.*

5. Perusal of the order passed by the learned CIT(A) would show that the learned CIT(A) has followed the decision rendered by Hon'ble Supreme Court in the case of S.A. Builders Ltd. (supra) and Hero Cycles Pvt. Ltd. (supra) in deciding the issue in favour of the assessee. We noticed that the learned CIT(A) has observed that the assessee as well as M/s. Setu Securities (P) Ltd. are engaged in same line of business of trading in share and finance activity and further the assessee was holding 51% shares of M/s. Setu Securities (P) Ltd.. The learned CIT(A) also observed that the money advanced by the assessee has been used by the above said company for business purpose only and not for any personal or non-business purpose. During the course of arguments, the Learned AR brought our attention to the following observations made by Hon'ble Supreme Court in paragraph 35 of its order passed in the case of S.A. Builders Ltd. (supra) :

*We wish to make it clear that it is not our opinion that in every case interest on borrowed loan has to be allowed if the assessee advances it to a sister concern. It all depends on the facts and circumstances of the respective case. For instance, if the Directors of the sister concern utilize the amount advanced to it by the assessee for their personal benefit, obviously it cannot be said that such money was advanced as a measure of commercial expediency. However, money can be said to be advanced to a sister concern for commercial expediency in many other circumstances (which need not be enumerated here). 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.*

In the instant case, the assessee is holding 51% shares of M/s. Setu Securities (P) Ltd. and hence he has a deep interest in the above said company. Since it has been found that money advanced by the assessee has been used by the above said company for business purposes, as per the decision rendered by Hon'ble Supreme Court in the case of S.A. Builders Ltd. (supra), interest claimed by the assessee on borrowed funds is deductible. We noticed that the

decision rendered by Hon'ble Bombay High Court in the case of Phaltan Sugar Works Pvt. Ltd. (supra) was prior to the decision rendered by Hon'ble Supreme Court in the case of S.A. Builders Ltd. (supra). Since the decision rendered by the learned CIT(A) is in accordance with the ratio laid down by Hon'ble Supreme Court in the case of S.A. Builders Ltd. (supra), we do not find any reason to interfere with the order passed by him.

6. In the result, appeal filed by the Revenue is dismissed.

Order has been pronounced in the Court on 15.6.2018.

Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 15/6/2018

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

Senior Private Secretary  
ITAT, Mumbai

PS