

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

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER
AND SH. N. K. CHOUDHRY, JUDICIAL MEMBER

I. T. A. No. 649/Asr/2014
Assessment Year: 2010-11

Sushil Kumar Bansal,
c/o Bansal Sweets,
Lawrence Road, Amritsar

vs. Income Tax Officer,
Ward 5(4), Amritsar

[PAN: AAMPB 4646D]

(Appellant)

(Respondent)

Appellant by : Sh. Padam Bahl (C.A.)

Respondent by: Sh. Charan Dass (D.R.)

Date of Hearing: 07.05.2019

Date of Pronouncement: 30.05.2019

ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Assessee agitating the Order by the Commissioner of Income Tax (Appeals), Amritsar ('CIT(A)' for short) dated 26.09.2014, partly allowing the assessee's appeal contesting his assessment u/s. 143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) dated 30.3.2013 for Assessment Year (AY) 2010-11.

2. The facts of the case, in-so-far as are relevant, are that the assessee-individual, dealing in shares, was during the course of assessment proceedings, found to have given interest-free advances aggregating to Rs.70.56 lacs to different family members, viz. Seema Bansal, Shilpa Bansal and Sagar Bansal. That is, without any business purpose. The assessee had, at the same time, incurred interest

expenditure at Rs.10.42 lacs for the relevant year on loans from Bansal Sweets, Chandigarh (Rs.3.62 lacs) and ICICI Bank (Rs.6.80 lacs), claimed deductible u/s. 36(1)(iii) in the computation of his business income. The same was accordingly disallowed. The same stood confirmed in appeal in the absence of the assessee showing any direct nexus between the borrowed capital and its user for business purposes. Aggrieved, the assessee is in second appeal.

3. During hearing, admitting the matter to be purely factual, it was submitted by the Id. counsel for the assessee, Sh. Bahl, drawing our attention to the balance-sheet as at the year-end (31.03.2010/PB pgs. 1-7), that out of total unsecured loans of Rs.217.20 lacs (Schedule C to the balance-sheet) only that from Bansal Sweet Shop (Rs.42.77 lacs) is interest bearing. The assessee, thus, had, as on 31/3/2010, an interest-free capital of Rs.258.63 lacs, as under: (Amt. in Rs. lacs)

— Own capital	: 84.20 lacs
— Interest-free unsecured loans	: <u>174.43</u> lacs
	<u>258.63</u> lacs

As against this, the assessee's net (i.e., net of secured loans there-against, at Rs. 22.30 lacs) investment in fixed assets is at Rs.139.24 (Rs. 161.54 lacs – Rs. 22.30 lacs) and interest-free loans (at Rs.101.09 lacs), is at a total of Rs.240.33 lacs, leaving thus a surplus of Rs.18.30 lacs (Rs. 258.63 lacs – Rs.240.33 lacs) as on 31.03.2010. It is this amount which together with interest-bearing capital of Rs.85.42 lacs (on which the impugned interest has been paid) and a minor sum of Rs.0.08 lacs, being expense payable), that finances the other assets of the company as on 31.03.2010. We list the same for ready reference as under: (Amt. in Rs. lacs)

— Investment & Deposits	: 5.18
— Advance & Securities	: 82.17
— Closing stock (of shares)	: 11.46

— Cash & Bank balances : 04.97
103.78

There was, accordingly, it was urged, no scope for disallowance of interest, in the given facts and circumstances of the case.

4. We have heard the parties, and perused the material on record.

No doubt, some of the assets purportedly financed by interest-bearing capital, as investments (at Rs. 5.18 lacs), even as observed by the Bench during hearing, cannot be regarded as business assets, being only the assessee's personal investments, so that the same would stand to be reckoned as financed by own/interest-free capital. Even the entire cash-in-hand (at Rs.5 lacs (approx.)) cannot be regarded as entirely a business asset, particularly considering that the assessee has an overdraft (OD) limit (from ICICI Bank), which is in the nature of a current account, so that the excess cash-in-hand, i.e., as not required for the business for the time being, could be deposited in bank, reducing the interest liability. It would be surely a different matter where the same is shown as held for business purposes. The assessee's business establishment does not warrant maintenance of cash-in-hand at that level. Be that as it may be, the assessee has a surplus interest-free capital at Rs.18.30 lacs, which therefore would a sufficient be absorb these non-business assets.

Further, the position as on 31.03.2009, i.e., the beginning of the current year, would again need to be similarly examined, and the adequacy (or otherwise) of the interest-free capital thereat, reckoned like-wise. This is as the interest expenditure arises on the basis of borrowed capital utilized during the year. The same may be, as indeed would be, variable from time to time. The position as the beginning and end of the year, the two termini, by exhibiting the avenue of the borrowed funds thereat, are indicative of the said user during the year, though in case of any

contrary indication, a more detailed analysis (of the fund position as obtaining during the year) may have to be done. Reference in this regard may also be made to a recent order by the Tribunal in *Sunil Grover v. Asst. CIT* (ITA No. 97/Asr/2017, dated 20/3/2019). A quick browse of the balance-sheet (as at 31/3/2010) in the instant case reveals the accretion to the capital during the year to be at Rs.6.51 lacs (Sch. A). The same is lower than the surplus as at 31.03.2010. Though, sure, a precise and definite finding could be issued only after examining the balance-sheet as at 31.03.2009, the inference that arises is one of adequacy of interest-free capital as at the beginning of the year as well. No adverse circumstance is observed. No disallowance of interest is, under the circumstances, called for.

The Id. CIT(A) has confirmed the disallowance in principle, though allowed part relief on the basis that the same be worked out on the non-business user of capital, i.e., Rs. 70.56 lacs, and not with reference to the entire interest, disallowed in full at Rs. 10.42 lacs. We are in agreement with the substance of his decision, i.e., that the onus to establish the user of the borrowed capital during the relevant year for business purposes, entitling it for deduction u/s. 36(1)(iii), is on the assessee. No analysis of the fund position, even as the matter is primarily factual, has however been carried out at any stage. The relief allowed by us is on such an exercise, carried out on the basis of the material on record.

We decide accordingly.

5. In the result, the assessee's appeal is allowed.

Order pronounced in the open court on May 30, 2019

Sd/-

(N. K. Choudhry)

Judicial Member

Sd/-

(Sanjay Arora)

Accountant Member

Date: 30.05.2019

/GP/Sr/ Ps.

Copy of the order forwarded to:

- (1) The Appellant: Sushil Kumar Bansal, C/o Bansal Sweets,
Lawrence Road, Amritsar
- (2) The Respondent: Income Tax Officer, Ward 5(4), Amritsar
- (3) The CIT(Appeals), Amritsar
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

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By Order