

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'B' CHANDIGARH

BEFORE: SHRI A.D.JAIN, VICE PRESIDENT AND
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 216/CHD/2023

निर्धारण वर्ष / Assessment Year : 2014-15

M/s Moonlight Properties Pvt. Ltd., 632, Phase VI, Mohali, Punjab.	बनाम VS	The ACIT, Central Circle-II, Chandigarh.
स्थायी लेखा सं./PAN /TAN No: AACCM3289L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Nikhil Goyal, Advocate and
Shri Ashok Goyal, C.A.

राजस्व की ओर से/ Revenue by : Shri Dharam Vir, JCIT, Sr.DR

तारीख/Date of Hearing : 30.01.2024

उद्घोषणा की तारीख/Date of Pronouncement : 01.04.2024

आदेश/ORDER

PER A.D.JAIN, VICE PRESIDENT

This is assessee's appeal for assessment year 2014-15, challenging the order dated 28.03.2023 passed by the Id. CIT(A), confirming disallowance of interest of Rs.75,75,208/- u/s 36(1)(iii) of the Income Tax Act, 1961 made by the Assessing Officer.

2. The assessee company had given advance to Shri Harpal Singh, Director, amounting to Rs.7,80,19,515/-. The AO

made disallowance of interest @ 12% of average advance outstanding, of Rs.6,31,26,735/-, amounting to Rs.75,75,208/-. The assessee held that there was no nexus between the advances given and the business of the assessee. It was held that the assessee did not have sufficient liquid funds to make advances to the Director; that this was evident from the fact that the assessee had raised further loans of Rs.3,75,40,720/- during the year; that had there been liquid assets with the assessee, need for taking further loan would not have arisen.

3. By virtue of the impugned order, the ld. CIT(A) has confirmed the disallowance, bringing the assessee in further appeal before us.

4. Heard. Before the AO, the assessee had stated that it had with it share capital of Rs.5,82,57,000/- and Rs.35,52,38,985/- by way of reserves and surplus, whereas the advance amount was of Rs.7,80,19,515/-. The AO, however, did not take into consideration this assertion of the assessee. The assessee stated that the advance had been given for business purposes, out of commercial expediency. The AO, however, held that the assessee could not prove any

nexus between the advance given to the Director and the business of the assessee. The AO also held that no interest free funds were available with the assessee while making the advance, and that on the contrary, interest bearing funds had been borrowed during the year.

5. The ld. CIT(A) has held that the assessee had given interest free advance to Shri Harpal Singh, Director, amounting to Rs.7,80,19,515/- as on 31.03.2014, with opening balance of Rs.4,82,33,955/-; that the assessee had not explained the business purpose for which the advance/loan had been given to its Director; that the assessee had only stated that the loan/advance had been given to ensure that its business activities were carried out smoothly; that however, it had not been explained as to how advancing of the loan would result in carrying out its business activities smoothly; that the assessee had not discharged its onus by explaining that the loan had been given out of business expediency and for business purposes; that as per the assessee's balance sheet for the year, the interest free funds had remained more or less static, from opening balances; that further, the assessee had taken huge secured loans from banks, on which, interest of

Rs.5,00,97,515/- had been debited from the Profit & Loss Account; that the assessee had not furnished copy of the bank statement to show availability of funds in the bank account at the time when the loans were advanced; that so, it was not possible to ascertain whether the amounts were advanced out of debit balance or credit balance in the assessee's bank account; that in the absence of the bank statement, the assessee's onus for claiming expenditure u/s 36(1)(iii) of the Act, to prove that the borrowed interest bearing funds had been utilized for business purposes, had not been discharged; that so, the assessee had not been able to justify its claim of interest paid, as made in the Profit & Loss Account; that the assessee had already applied all the interest free funds available with it in different assets, and so, no interest free funds were available with it as on the date of advancing the loans to Shri Harpal Singh, Director; and that the AO was, therefore, justified in making a disallowance of interest amounting to Rs.75,75,208/-.

6. The assessee has sought to place on record, by way of additional evidence, copies of statement of bank account of the assessee, Annual Tax Statements of the assessee u/s 203AA of the Income Tax Act, in Form 26AS for Financial

Year 2013-14, relevant to assessment year 2014-15, i.e., the year under consideration, ledger of Shri Harpal Singh, Director in the books of the assessee, Shri Harpal Singh's capital account in the books of M/s Synergy Thrislington, in which, Shri Harpal Singh was a partner, Partnership Deed of M/s Synergy Thrislington, PAN card of M/s Synergy Thrislington, and the assessee's balance sheet for Financial Year 2013-14, relevant to assessment year 2014-15. The assessee has contended that it was due to multiplicity of pending tax proceedings that these documents inadvertently could not be placed before the taxing authorities. It has been contended that from the Form 26AS (APB II, page 139) for Financial Year 2013-14, it is evident that the assessee had received an Income Tax refund of Rs.2,97,85,560/- for assessment year 2012-13, on 21.12.2013, constituting an interest free receipt. It has been contended that from the bank statement of State Bank of India Account No.30177990423 (APB, page 88), it is available that after receipt of the aforesaid interest free funds, by way of Income Tax Refund, of Rs. 2,97,85,560/-, this amount was immediately transferred to M/s Synergy Thrislington, where Shri Harpal Singh, Director of the assessee company is a

partner. It has been contended that the Partnership Deed (APB II, page 144) and PAN Card (APB II, page 148) of M/s Synergy Thrislington are clear in this regard. It has been contended that the aforesaid transfer of funds occurred in five installments, each amounting to Rs.50 lacs, and one instalment of Rs.47,85,560/-, on the same day, as on which the aforesaid income tax refund of Rs.2,97,85,560/- was received in the bank account of the assessee. It has been contended that the assessee's State Bank of India bank account No. 30177990423 is devoid of drawing power and maintains a credit balance; and that the interest rate charged is also 'zero'. It has further been contended that a perusal of ledger of "Harpal Singh Capital Account" in the books of the firm (APB II, page 143) would show that the interest free funds are being credited in the capital account, comprising of five installments, as stated earlier, each amounting to Rs.50 lacs and one instalment of Rs.47,85,560/-; that from this, it is evident that the partner's capital account reflects debits and credits from a State Bank of India bank account. It has been stated that since the company and the firm have a common management and share holding, the firm is considered as a sister concern

of the assessee company. It has been stated that the interest free funds of Rs.2,97,85,560/- were diverted to the sister concern and the balance of Shri Harpal Singh was debited by the amount of Rs.2,97,85,560/-, making the total debit balance in the books of the assessee to be Rs.7,80,19,515/-.

6.1 It has been contended that the ledger of Shri Harpal Singh in the books of the assessee makes it evident that payment was made to the firm on behalf of Shri Harpal Singh. It has been averred that the taxing authorities have, thus, erred in treating the transfer of funds to be from interest bearing funds. It has been contended that a thorough examination of the ledger within the firm's books, under the name of Shri Harpal Singh Capital Account would establish that the funds, housed within the capital account, are explicitly earmarked and were utilized for the fulfillment of the firm's business requirements, disproving the finding that the funds were not transferred for business purposes. It has been contended that the capital account of a partner in a firm represents the partner's investment or contribution to the business; that when a partner introduces capital into the firm, it is recorded in the capital account to reflect the

investment in the business; that this capital is typically used for the operations and growth of the firm; that therefore, the authorities below went wrong in disallowing the interest u/s 36(1)(iii) of the Income Tax Act. It has been contended that the assessee adhered strictly to the provisions of Section 36(1)(iii) of the Act and it was justified in claiming the interest expenditure of Rs.5,00,97,515/- for the year under consideration. It has been contended that from the balance sheet (APB II, page 171) of the assessee, it is patent that the assessee had total interest free funds available amounting to Rs.41,37,65,985/- at the relevant time, comprising of share capital of Rs.5,82,57,000/-, reserves and surplus of Rs.35,52,38,985/- and unsecured loans of Rs.2,70,000/-. It has been stated that the total transfer made to the firm during the year under consideration amounted to Rs.2,97,85,560/-; that the total debit balance as per the ledger of Shri Harpal Singh in the books of the assessee was of Rs.7,80,19,515/- as on 31.03.2014 and of Rs.4,82,33,955/- as on 01.04.2013; that the AO computed the advances made over to Shri Harpal Singh by an average of the opening balance and the closing balance, amounting to Rs.6,31,26,735/-; that these funds

were transferred by the assessee out of the interest free funds available with it, amounting to Rs.41,37,65,985/-, as stated earlier. It has been contended that as such, the ld. CIT(A) has gone wrong in sustaining the action of the AO in including the opening balance for computing the total funds transferred to Shri Harpal Singh.

6.2 Reliance has been sought to be placed on the decision of the Hon'ble Supreme Court in the case of "S.A. Builders Ltd. Vs CIT(Appeals), Chandigarh", [2007] 158 taxman 74 (S.C), in which, it was held that extending loan to subsidiary company from Cash Credit Account having huge debit balance would fall under the expression 'used for the purpose of business'. It has been contended that in the assessee's case, the funds were transferred out of the bank account having credit balance, without any drawing power and interest liability thereon.

6.3 It has been stated that while following "S.A. Builders" (supra), the Hon'ble Bombay High Court, in "Vaman Prestressing Co. (P) Ltd. Vs Addl. Commissioner of Income Tax" [2023] 154 taxmann.com 325 (Bom), it was held that the reasons to believe escapement of income recorded in that

case were purely on the basis that the petitioner had advanced borrowed capital to its sister concern and associate concern without charging any interest and, therefore, the interest claimed on borrowed capital was not allowable u/s 36(1)(iii) of the Act; that in “S.A.Builders” (supra), the Hon'ble Supreme Court was considering an almost identical situation, wherein, the assessee had transferred a huge amount of Rs.82 lacs to its subsidiary company out of the Cash Credit Account of the assessee, in which, there was a huge debit balance; that the AO had held that since the assessee had diverted its borrowed funds to its sister concern without charging any interest, proportionate interest relating to the said amount out of the total interest paid to the bank deserved to be disallowed; that the Hon'ble Supreme Court held that extending such a loan would fall under the expression “used for purpose of business”; that it was held that if the amount has been advanced as a measure of commercial expediency, the interest on the funds borrowed by the assessee should be allowed as a deduction u/s 36(1)(iii) of the Act; that it was held that the petitioner had been granting loans and advances to its sister and associate concerns from

assessment year 2003-04; that it was held that even in assessment years 2004-05 to 2008-09, the Revenue had not made any disallowance of interest expenditure in those years, thereby accepting that the deployment of funds was for business purpose; that it was held that the disallowance made for assessment year 2003-04 had been set aside in appeal by the Id. CIT(A) as well as the ITAT; that it was held that moreover, there can be no other reason but commercial expediency for the petitioner to give loans and advances and capital to ICON; that it was held that the Revenue cannot justifiably claim to put itself in the armchair of the businessman, or in the position of the Board of Directors and assume the role to decide as to how a prudent businessman should act; and that it was held that the authorities must not look at the matter from their own point of view, but that of a prudent businessman.

6.4 It has been contended that in “Kissan Fats Ltd. Vs Dy. CIT, Central Circle-I, Ludhiana”, [2017] 77 taxmann.com 82 (CHD-Trib), the Tribunal held that if there are sufficient interest free funds available to the assessee to meet its investment and, at the same time, the assessee has raised a loan, it can be presumed that the investments were from the

interest free funds available to the assessee; that the Bench held that where apart from interest bearing borrowed funds, sufficient interest free own funds were available with the assessee, a presumption would arise that non business investments were made out of the same and no interest expenditure could be presumed to have been incurred by the assessee for making such investments and that thus, the disallowance of interest made u/s 36(1)(iii) of the Act was uncalled for and unjustified; that while holding so, the Tribunal placed reliance on the decision of the Hon'ble Punjab & Haryana High Court in the case of "Bright Enterprises (P) Ltd.", wherein it was categorically held that where the funds/reserves were sufficient to cover interest free advances, the presumption that would arise was that the investments were made out of interest free funds generated or available with the company and that their Lordships were entirely in agreement with the judgement of the Bombay High Court in "CIT Vs Reliance Utilities and Power Ltd.", [2009] 313 ITR 340 (Bom), holding that if there are interest free funds available, a presumption would arise that investment would be out of the interest free funds

generated or available with the company, if the interest free funds were sufficient to meet the investment.

7. It has been argued that in “CIT, Jalandhar-I, Jalandhar Vs Max India Ltd.” [2017] 80 taxmann.com 98 (P&H), it was found after going through the Cash Flow Statement, that the company had received interest free share capital from the issue of shares; that it was held that where the assessee gave interest free loans to its subsidiaries out of surplus funds, the disallowance made by the AO u/s 36(1)(iii) of the Act was to be deleted; that it was held that admittedly, the assessee company had given interest free loans and advances amounting to Rs.2297.83 lacs upto the end of the relevant year, including Rs.704 lacs during the relevant year to its three subsidiary companies, that the AO did not make any disallowance in respect of expenditure incurred on borrowed funds u/s 36(1)(iii) of the Act in relation to interest free loans and advances given to the said three subsidiary companies in the earlier years; that after perusing the Cash Flow Statement of the assessee company for the assessment year in question, the Tribunal observed that the assessee company had received substantial proceeds from preferential issue of share capital, amounting to Rs.99999.98 lacs, that

it had also received dividend income of Rs.166.13 Cr from various investments, that after giving interest free loans of Rs.7.04 Cr to its subsidiary companies, the assessee was left with surplus interest free funds of Rs.53.86 Cr, which were utilized for giving interest free advances and that thus, there was no nexus of the interest expenditure incurred during the year with the said loans/advances given to the subsidiary companies, warranting disallowance u/s 36(1)(iii) of the Act.

8. It has been contended that the ld. CIT(A) has erred in holding against the assessee by observing that since all the interest free funds available with the assessee stood already applied in different assets, they were not available with the assessee as on the date when the advance was given to Shri Harpal Singh, Director, and that the assessee could not establish business purposes for the same. It has been contended that in the case of "PCIT Vs Malhotra Book Depot", [2019] 112 taxmann.com 34 (P&H), the Hon'ble Supreme Court upheld the decision of the Tribunal, wherein it was found from the balance sheet that during assessment year 2010-11, the capital of the assessee company was of Rs.31,71,64,888/- and the current liabilities and profits were to the tune of Rs.17,41,39,750/-, totaling to an amount

of Rs.49,43,04,638/-, representing non interest bearing funds available with the assessee. It has been contended that the Tribunal had held that out of such total available funds on which no interest was paid by the assessee, the assessee had advanced a sum of Rs.20,32,60,000/-and that so, there were sufficient non- interest bearing funds, out of which, the assessee had advanced funds to/invested funds in the sister concerns. It has been contended that the Tribunal had observed that similarly, for assessment year 2012-13, the capital of the firm was of Rs.13,21,61,500/- and interest free current liabilities were of Rs.91,37,20,514/-, leading to a total availability of interest free funds with the assessee, at Rs.104.58 Cr. It has been contended that the Tribunal observed that for this latter year, the assessee had made investments in the group concerns, to the tune of Rs.53.76 Cr, as noted by the AO. It has been contended that the Tribunal further found that during the relevant years, the assessee had sufficient interest free funds to make investment in the group companies. It has been contended that it was in view of these findings of the Tribunal that the Hon'ble High Court held in favour of the assessee, observing that no substantial

question of law arose, since the findings recorded by the Tribunal were not shown to be illegal or perverse.

8.1 It has been submitted that in the case of “Beekons Industries Ltd. Vs Commissioner of Income Tax”, [2023] 149 taxmann.com 383 (P&H), the Hon'ble High Court set aside the order passed by the Tribunal and restored that of the ld. CIT(A), directing the AO to recompute the disallowance as per the decision in the case of “Hero Cycles”, [2015] 63 taxmann.com 308 (S.C) and that in “Pr. CIT Vs Holy Faith International (P) Ltd.”, order dated 24.07.2017, passed in IT Appeal No. 87 of 2017. It was contended that in the scrutiny proceedings, the assessee had been found to have given loans and advances amounting to Rs.3,11,22,866/- to its Directors, relatives of Directors and sister concerns in which the Directors had substantial interest, without charging any interest, whereas at the same time, the assessee company was paying interest on loans taken from banks and other financial institutions.

8.2 It has been asserted that in the case of “ACIT, Panchkula Vs Janak Global Resources (P) Ltd.”, [2019] 102 taxmann.com 472 (CHD-TRIB), it was held that where the

assessee had sufficient own interest free funds to make investments, a presumption would arise that the advances made by the assessee to its sister concerns were out of interest free funds and, therefore, interest expenses could not be disallowed u/s 36(1)(iii) of the Act, in the light of the decision of the Hon'ble Supreme Court in the case of "Hero Cycles" (supra).

9. The ld. DR, on the other hand, has strongly opposed the admission of the additional evidence sought to be produced on record by the assessee. It has been contended that as available from the order under appeal, the assessee did not furnish copy of the bank statement in order to show availability of funds in its bank account as on the dates when the amounts had been advanced to Shri Harpal Singh, Director, in order to find out whether the same had been given out of debit balance or credit balance in the bank account; that under the provisions of Section 36(1)(iii) of the Act, it was the assessee's onus to substantiate that the borrowed funds had been utilized for business purposes during the year under consideration; that such onus could have been discharged by furnishing requisite evidence in the shape of bank statement so as to show how interest bearing

funds had been utilized for business purposes, i.e., source of funds in the bank statement on the dates on which such advances were given to Shri Harpal Singh, Director; that such onus had not been discharged by the assessee as it failed to substantiate the claim made for the interest paid in the Profit & Loss Account. The ld. DR has contended that as such, it does not lie in the mouth of the assessee to at this stage seek production of additional evidence.

10. We have considered the matter in the light of the rival contentions and the material place on record. We find that the issue up for consideration is as to whether the claim of the assessee for deduction under the provisions of Section 36(1)(iii) of the Act has rightly been disallowed by the authorities below. We find that in order to resolve this controversy in keeping with the decision of the Hon'ble Supreme Court in the case of "Hero Cycles" (supra), it is to be seen as to whether the assessee had availability of sufficient interest free funds with it, as on the dates on which funds were advanced by it to Shri Harpal Singh, Director. It cannot be denied, as also has not been done before us, that such availability of funds can be ascertained on documentary evidence, which is proved on record

unrebutted. In this scenario, we are of the considered opinion that the statement of bank account of the assessee for Financial Year 2013-14, relevant to the year under consideration, i.e., assessment year 2014-15, the assessee's Annual Tax Statement in Form 26AS for the year under consideration, the ledger of Shri Harpal Singh, Director in assessee's books, the capital account of Shri Harpal Singh, Director in the books of M/s Synergy Thrislington, the partnership firm where Shri Harpal Singh was a partner, the Partnership Deed of M/s Synergy Thrislington, the PAN of M/s Synergy Thrislington and the assessee's balance sheet for assessment year 2014-15, are required to be adduced as evidence, and the Form 26AS would show the veracity of the assessee's contention that it had received Income Tax refund on 21.12.2013, as contended. Transfer of such refund to M/s Synergy Thrislington would also be reflected in the bank statement. The factum of Shri Harpal Singh, Director, being a partner in M/s Synergy Thrislington would be evincible from the Partnership Deed and PAN Card of M/s Synergy Thrislington. Further, perusal of the bank statement would also divulge as to whether the funds were given out from the debit balance or the credit balance in the bank account and

would also allow ascertainment of the truthfulness or otherwise of the assessee's contention that its bank account is devoid of drawing power and it maintains a credit balance and that the interest rate charged is 'zero'. Still further, the ledger of "Harpal Singh Capital Account" in the books of M/s Synergy Thrislington would show as to whether indeed interest free funds were credited in the capital account in instalments, or not. In fact, the perusal of the partner's capital account juxta-posed with the assessee's account would evince the flow of funds, i.e., debits and credits. The alleged payment on behalf of Shri Harpal Singh to the firm, M/s Synergy Thrislington would also be evincible from the ledger of Shri Harpal Singh in the books of the assessee. Too, the availability of interest free funds with the assessee at the relevant time can very well be ascertained from the balance sheet of the assessee. Since these documents were not made available by the assessee before either of the authorities below, finding these documents to be very material and relevant for adjudicating the matter, as discussed herein above, we deem it appropriate to restore the issue to the AO to verify the correctness and authenticity of these documents, produced for the first time before us

and to adjudicate the issue afresh after providing adequate opportunity of being heard to the assessee.

11. This is entirely in keeping with the decision of the Third Member of the Tribunal in the case of “Char Bhai Biri Works Vs ACIT”, 87 ITD 189 (Pune) (TM). Therein, the assessee filed certain additional evidence before the Tribunal for consideration. It was stated that some of the papers might have already been given to the Revenue authorities, but since details were not available, all those papers should be treated as additional evidence. Those documents were found to be very material and relevant for adjudicating the matter. Since those documents were not available with the AO and were produced before the Tribunal for the first time, it was held that the issue was to be restored to the file of the AO to verify the correctness and authenticity of such documents, and also to adjudicate the gross profit issue afresh after providing adequate opportunity to the assessee of being heard and looking into comparable cases. In the present case, we are alive to the fact that the best evidence in the shape of the account statement was not produced by the assessee before the authorities below. However, as discussed herein above, we have found the afore-enumerated

documents, including the bank statement of the assessee, to be very material and relevant for adjudicating the matter in a just and proper manner. It is, therefore, that exercising our powers under Rule 29 of the ITAT Rules, that we are ordering all these documents to be adduced in evidence.

11.1 In “Braganza Construction (P) Ltd. Vs ACIT, Circle-II(1), Panaji”, [2020] 116 taxmann.com 11 (Bom), the Tribunal had treated a certain amount expended by the assessee as unexplained expenditure and it had not considered the assessee's application seeking leave to produce additional evidence at the stage of appeal. The Hon'ble High Court held that under Rule 29 of the ITAT Rules, 1963, the Tribunal does have the power to permit production of additional evidence before the Tribunal, if the case for the same is now made out; that this means that the Tribunal is duty bound to consider the application seeking leave to produce additional evidence at the appellate stage, in accordance with law and on its own merits.

11.2 In “Haryana State Roads & Bridges Development Corporation Ltd. Vs Commissioner of Income Tax, Panchkula”, [2016] 75 taxmann.com 104 (P&H), the assessee

sought to produce a Challan before the Tribunal showing that payment of tax was deducted at source in the Government Treasury, but the Tribunal did not permit it to do so. The Hon'ble High Court held that it was a fit case for the Tribunal to have exercised its powers under Rule 29 of the Appellate Tribunal Rules, 1963, requiring the production of the Challan evidencing the payment of the tax deducted at source in the Government Treasury; that all that was required was to direct the authorities to examine whether the Challan was genuine and whether the amount was paid into the Government Treasury or not in accordance with law; that the ends of justice certainly required the same; that even if the assessee had contended before the AO and the ld. CIT(A) that the amount was not payable, it would not make any difference if, in fact, the amount had been paid.

11.3 In “CIT Vsa Salig Ram Prem Nath”, [1989] 45 taxman 322 (P&H), it was held that there can be no manner of doubt that a Tribunal is vested with the requisite authority and jurisdiction to admit additional evidence and material in order to do substantial justice to the parties.

12. For the above discussion, in the peculiar facts and circumstances, as enumerated, the matter is remanded to the file of the AO to verify the correctness and authenticity of the documents discussed and to provide adequate opportunity of hearing to the assessee with regard thereto and to re-adjudicate the matter. Ordered accordingly.

13. In the result, for statistical purposes, the appeal is treated as allowed.

Order pronounced on 01.04.2024.

Sd/-
(VIKRAM SINGH YADAV)
ACCOUNTANTMEMBER

Sd/-
(A.D.JAIN)
VICE PRESIDENT

“Poonam”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar