

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

**BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
& SHRI PARESH M. JOSHI, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.451/CHD/2016

निर्धारण वर्ष / Assessment Year : 2008-09

Rahul Berry, Prop. Berry Cotton Industries, B-XIII-1661, Karimpaura Chowk, Ludhiana	Vs. बनाम	The ACIT, Circle II, Ludhiana
स्थायी लेखा सं./PAN NO: ABKPB0070A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Sh. S.K Mukhi, Advocate

राजस्व की ओर से/ Revenue by : Dr. Ranjit Kaur, Addl CIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 01.10.2024

उद्घोषणा की तारीख/Date of Pronouncement : 17.12.2024

आदेश/Order

Per Vikram Singh Yadav, A.M.:

This is an appeal filed by the Assessee against the order dated 29.02.2016 of the ld. Commissioner of Income Tax (Appeals)-1, Ludhiana [in short, 'CIT(A)'], pertaining to A.Y. 2008-09.

2. At the outset, it is noted that Coordinate Bench vide its order dated 16.11.2016 has dismissed the appeal of the Assessee on account of non-prosecution. Subsequently, the matter was recalled on application filed by the Assessee vide order dated 24/08/2023 for

fresh adjudication. Hence, the present appeal has come up for adjudication before us.

3. Vide Ground Nos 2 & 3, the Assessee has challenged the sustenance of addition of Rs. 6,26,947/- u/s 36(1)(iii) of the Income Tax Act, 1961 (in short 'the Act'). In this regard, briefly, facts of the case are that during the course of assessment proceedings, the Assessing Officer on examination of transactions carried out by the Assessee with its sister concern, M/s Naval Berry & Co, Ludhiana observed that there was no business transaction during the year, however, the Assessee has paid a sum of Rs. 45,15,000/- during the year and thereafter a show cause notice was issued as to why proportionate interest may not be disallowed on interest free advances made to the sister concern. In response, the Assessee submitted that the amount of Rs. 45,15,000/- was paid against Rs. 1,52,74,579/- outstanding on demand made by Naval Berry & Co to make a payment in favour of head office to facilitate the repayment. Further, there were regular sale / purchase transactions carried out between the branches of the Assessee with the branches of Naval Berry & Co and copy of account of these branches were submitted.

4. The reply so filed by the Assessee was considered but not found acceptable to the A.O. As per the A.O, in the audited books of account

there are sundry creditors totaling of Rs. 1,57,32,327/- standing in the name of Naval Berry & Co and there are sundry debtors standing amounting to Rs. 1,87,05,840/- against in the name of Naval Berry and Co and its various branches, therefore, the plea of the Assessee that he is paying back amount which is outstanding to its sister concern was found unacceptable as there was more amount payable by the sister concern to the Assessee. It was further observed by the Assessing Officer that Assessee had borrowed funds on which he is paying interest to the tune of Rs. 39,63,871/-. On one hand the Assessee is paying interest and on the other hand, huge advances are being made to sister concern without any business purpose and thereafter relying on the judgement of Hon'ble Punjab & Haryana High Court in the case of Abhishek Industries 286 ITR 1, the A.O. made an addition/disallowance of proportionate interest at the rate of 15% and an amount of Rs. 6,36,947/- was brought to tax in the hands of the Assessee.

5. Being aggrieved, the Assessee carried the matter in appeal before the ld. CIT(A). The submissions made before the Assessing Officer were reiterated, copy of the accounts of the sister concern were again submitted and it was submitted that the Assessee and its sister concern both have 04-05 branches each and sometimes the payment

due from one branch is made from another branch to expedite the process and later on transactions entries are passed to clear the balance and it was submitted that there are regular purchase and sale transactions carried out between the various branches of the Assessee and its sister concern. It was further submitted that no basis of calculation as to how the Assessing Officer has arrived at a figure of Rs. 6,26,947/- has been provided by the Assessing Officer.

6. The submissions, so filed by the Assessee, were considered but not found acceptable to the ld. CIT. The ld. CIT(A) in his order has stated that no supporting evidence has been filed by the Assessee to substantiate the claim of business purpose by way of confirmed copy of the accounts of the Assessee in the books of account of the said party and therefore, in such circumstances, the Assessing Officer has rightly pointed out that no business purpose has been substantiated with supporting evidence by the Assessee and, therefore, the disallowance so made by the Assessing Officer was sustained.

7. Against the said findings, the Assessee is in appeal before us. During the course of hearing, the ld. AR took us through the ledger accounts of the sister concern maintained in the books of account of the assessee and it was submitted that from the perusal of the ledger

accounts, it can be noted that separate ledger account has been maintained for each of the branches and it can be seen from the entries in the ledger account that there are regular sale and purchase transactions which have been carried out by various branches of the Assessee with various branches of the sister concern, therefore, findings of the lower authorities is factually incorrect as is evident from the ledger accounts which had been duly submitted before the lower authorities. It was accordingly submitted that there was no basis for disallowance of proportionate interest invoking the provisions of section 36(1)(iii) of the Act.

8. Per contra, the ld. DR relied on the findings of the lower authorities.

9. We have heard the rival contentions of the parties and have perused the material on record. The explanation of the assessee that there are regular business transactions between various branches of the assessee with various branches of the sister concern is evident from the ledger accounts placed on record. The AO himself has recorded the fact that there are outstanding in form of debtors and in form of creditors from various branches of the sister concern. The same demonstrate and support the factum of regular business

transactions between the assessee and its sister concern and as part of such business dealing, where the money has been transferred to the sister concern, the same is part of regular business settlement and the net effect thereof is reflected at the year end. In light of the same, we find that there is no basis to invoke the provisions of section 36(1)(iii) of the Act and the addition so made and sustained by the Id CIT(A) is hereby set-aside. The ground of appeals are accordingly allowed.

10. In Ground No.4, the Assessee has challenged the sustenance of addition of Rs. 3,69,555/. In this regard briefly, the facts of the case are that during the course of assessment proceedings, the Assessing Officer observed that the Assessee has taken building term loan amounting to Rs. 1,59,809/- for one of its branches whereas it has incurred expenses on building under construction amounting to Rs. 3,69,555/- which shows that the funds of the firm other than the building term loan has been utilized for building under construction. Therefore, relying on the decision of the Hon'ble Punjab & Haryana High Court in the case of Abhishek Industries, interest at the rate of 15% was proportionately disallowed amounting to Rs. 55,433/- which on appeal has been sustained by the Id. CIT(A) against which the Assessee is in appeal before us.

11. During the course of hearing, the ld. AR submitted that for the purpose of carrying out of the construction of the building, the Assessee has used its own funds and only an amount of Rs. 1,59,809/- was raised as a term loan for construction of building. It was accordingly submitted that there was no basis of disallowance of interest by invoking provisions of section 36(1)(iii) of the Act.

12. Per contra, the ld. DR relied on the findings of the lower authorities.

13. We have heard the parties and have perused the material on record. There is nothing on record to suggest that the assessee has utilized borrowed funds for construction of building other than the building term loan and in view of the same, the addition of Rs. 55,433/- is hereby directed to be deleted and the ground of appeal is allowed.

14. In the result, the appeal of the assessee is allowed.

Order pronounced on 17 .12.2024.

Sd/-

Sd/-

(PARESH M. JOSHI)
Judicial Member

(VIKRAM SINGH YADAV)
Accountant Member

आदेशकीप्रतिलिपिअग्रेषित / Copy of the order forwarded to :

1. अपीलार्थी/ The Assessee
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्डफाईल/ Guard File

आदेशानुसार/ By order,

सहायकपंजीकार/ Assistant Registrar