courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 14/09/2026

(2004) 05 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : IT Appeal No''s. 6,7,119 and 120 of 2003 13 May 2004

S.A. Builders Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 13-05-2004

Acts Referred:
Income Tax Act, 1961 — Section 154

Citation : (2005) 145 TAXMAN 107

Hon'ble Judges : N.K. Sud, J;Hemant Gupta, J

Bench : Full Bench

Advocate : Akshay Bhan, for the Assessee R.P. Sawhney and A.S. Tewatia, for the Revenue, for the Appellant;

Judgement

N.K. Sud, J.

This order will dispose of four appeals, viz., I.T.A. Nos. 6, 7, 119 and 120 of 2003, involving common questions of law and fact.

These appeals have been filed by the assessee-company against the order of the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as "the Tribunal"), dated 20-6-2002, for the assessment years 1990-91 and 1991-92. Although in the memorandum of appeals findings of the Tribunal on several issues have been questioned, but at the time of arguments counsel for the appellant confined his challenge to the finding whereby disallowance out of interest made by the assessing officer has been sustained. During the course of proceedings for the assessment year 1990-91, the assessing officer observed that the assessee had diverted huge amount to M/s. S.A.B. Credits Limited, a company under the same management. He further observed that during the year under assessment, a sum of Rs. 82 lakhs had been advanced out of the cash credit amount of the assessee-company in which there was a huge debit balance. He, therefore, held that since the assessee had diverted its borrowed funds to a sister concern without charging any interest, proportionate interest relating to the said amount out of the total interest paid to

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/sa-builders-ltd-appellant-hash-...

the bank deserved to be disallowed. Accordingly, he disallowed a sum of Rs. 5,66,729 on this score.

2. The assessee preferred an appeal before the CIT(A), Chandigarh (hereinafter referred to as "CIT(A)") who vide his order dated 15-4-1993, partially accepted the claim of the assessee. According to the CIT(A), out of the total amount of Rs. 82 lakhs advanced during the year under assessment to M/s. S.A.B. Credits Limited, only a sum of Rs. 18 lakhs had a clear nexus with the borrowed funds as the balance amount had been paid out of the receipts from the other parties to whom no interest had been paid. Accordingly, he directed the assessing officer to calculate disallowance of interest only relating to the sum of Rs. 18 lakhs. The disallowance was accordingly reduced to that extent.

3. Both the assessee as well as the revenue filed appeals before the Tribunal * The revenue questioned the reduction in disallowance granted by the CIT(A) whereas the assessee claimed that the entire disallowance deserved to be deleted. The Tribunal vide order dated 20-6-2002, accepted the case of the revenue and held that the entire amount of Rs. 82 lakhs had been advanced by utilising the overdraft account and, therefore, disallowance made by the assessing officer was justified. Accordingly, the revenue''s appeal on this issue was allowed and the assessee''s appeal was dismissed. I.T.A. Nos. 6 and 7 have, therefore, been filed by the assessee against these findings in the assessment year 1990-91.

4. Similarly, in the assessment year 1991-92, the assessing officer noticed that in addition to the sum of Rs, 82 lakhs advanced in the assessment year 1990-91, a further sum of Rs. 37,85,000 had been advanced to M/s. S.A.B. Credits Ltd., which also had a clear nexus with the amounts borrowed by the assessee on payment of interest. Accordingly, he disallowed proportionate interest relatable to these amounts amounting to Rs. 20,08,836.

5. On appeal by the assessee, the CIT(A) upheld the finding of the assessing officer that the sum of Rs. 37,85,000 advanced during the assessment year 1990-91 was relatable to the borrowed funds. However, in view of the findings of her predecessor in the assessment year 1990-91 that out of Rs. 82 lakhs advanced during that year, advance of Rs. 64 lakhs had no nexus with the borrowed funds, she reduced the disallowance from Rs. 20,08,836 to Rs. 10,03,536 vide her order dated 28-7-1994. The assessee was granted further relief of Rs. 1,48,464 by the CIT(A) vide order dated 6-9-1995, u/s 154 of the Act. On the cross appeals filed by the assessee as well as the revenue, the Tribunal following its order for the assessment year 1990-91, upheld the disallowance as made by the assessing officer. Accordingly, the appeal of the revenue on this issue was allowed and that of the assessee dismissed. I.T.A. Nos. 119 and 120 are directed against these findings.

6. We have heard counsel for the parties and perused the orders of the authorities below. The Tribunal has recorded categorical findings of fact that the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/sa-builders-ltd-appellant-hash-…

amounts advanced by the assessee to its sister concern-M/s. S.A.B. Credits Limited, had been advanced by utilising the overdrafts account and that on the dates on which the amounts were so advanced, there was no credit balance in the bank account of the assessee. The Tribunal has also observed that the assessee has not been able to explain the purpose for which the amount had been advanced to its sister concern without charging any interest. It has, therefore, also been held that there was no material on record to show that the assessee had derived any business benefit by advancing the interest-free amounts to its sister concern.

7. Counsel for the appellant has not been able to controvert these factual findings. Since it stands established that the amount of Rs. 82 lakhs and Rs. 37.85 lakhs had been advanced by the assessee to its sister concern from out of the overdraft account with the bank in which there was already a debit balance, the order of the Tribunal does not suffer from any factual or legal infirmity. We are, therefore, satisfied that no substantial question of law arises out of the order of the Tribunal for consideration by this court.

8. The appeals are, accordingly, dismissed. No costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/sa-builders-ltd-appellant-hash-…