

(2011) 04 P&H CK 0338

High Court Of Punjab And Haryana At Chandigarh

Case No: IT Appeal No. 9 of 2011

Nahar Poly Films Ltd.

APPELLANT

Vs

Commissioner of Income Tax,
Ludhiana

RESPONDENT

Date of Decision: April 7, 2011

Acts Referred:

- Income Tax Act, 1961 - Section 260A, 33B, 36(1), 80IA(4), 80IB

Citation: (2011) 201 TAXMAN 304

Hon'ble Judges: Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

Bench: Division Bench

Advocate: Sanjay Bansal and Anurag Goyal, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Ajay Kumar Mittal, J.

This appeal u/s 260A of the income tax Act, 1961 (for short "the Act") has been filed by the assessee against the order dated 24-5-2010, passed by the income tax Appellate Tribunal Chandigarh Bench "A", Chandigarh (in short "the Tribunal") in ITA No. 146/Chandi./09, relating to the assessment year 2006-07.

2. The following substantial questions of law have been claimed for determination of this Court:

(a) Whether on the facts and circumstances of the case, the Tribunal acted illegally and perversely, in holding that the interest of Rs. 9,05,976 paid by the appellant on Term Loan raised for acquiring asset in its existing business is disallowable in view of proviso to section 36(1)(iii) of the Act?

(b) Whether on the facts and circumstances of the case, the Tribunal acted perversely in interpreting the words "Expansion and Extension" as synonymous in

spite of the fact these two words have been used in the different sections separately and carry different meaning?

(c) Whether on the facts and circumstances of the case, the Tribunal acted perversely and illegally in holding that increase in spindle capacity in appellant's Unit is extension of business?

3. The facts, in brief, necessary for adjudication as narrated in the appeal, are that the assessee raised a term loan of Rs. 30,61,00,000 from Canara Bank, and another sum of Rs, 7,98,00,000 from the Punjab National Bank for acquisition of the assets for its existing business and paid interest on the term loan so raised. The assessee claimed the amount of interest paid as revenue expenditure u/s 36(1)(iii) of the Act. For the assessment year in question, the assessee filed its income tax return at the total income of Rs. 33,86,25,911. The Assessing Officer, however, vide order dated 21-1-2008, computed the total income of the assessee at Rs. 34,07,33,922 by making disallowance of some amounts including the amount paid as interest.

4. The Commissioner of income tax (Appeals) [in short "the CIT (A)"] sustained the disallowance made by the Assessing Officer and dismissed the appeal of the assessee vide order dated 12-1-2009.

5. The Tribunal upheld the orders of the lower authorities, i.e., the Assessing Officer and the CIT (A), and dismissed the assessee's appeal vide the order under appeal.

6. This is how the assessee is once again in appeal before us.

7. We have heard learned counsel for the assessee and have perused the record.

8. The only point that arises for consideration in this case is, whether the interest paid by the assessee on the borrowings made for purchase of the machinery in the facts of the present case was hit by the proviso to section 36(1)(iii) of the Act and was inadmissible revenue expense.

9. Learned counsel for the assessee submitted that there was no extension of business and, therefore, the proviso to section 36(1)(iii) did not apply. According to the learned counsel, it was only an expansion in business which had taken place and the same was not covered within the term "extension". Learned counsel argued that in section 36(1)(iii) the word "extension" has been used whereas sections 80-IC(8)(ix) and 80-IE(7)(iii) contain the word "expansion". Further the expression "restructuring and reconstruction" has been stated in section 80-ID(3)(i), 80-IB and 33B of the Act. Section 80-IA(4)(iv) has the term "renovation and modernisation" mentioned therein. Elaborating his submissions, the learned counsel urged that the Legislature has used different words in different sections which carry different meanings. The counsel relied upon two judgments of the High Court of Delhi, in [Commissioner of Income Tax Vs. Modi Industries Ltd.](#), and [The Commissioner of Income Tax Vs. Relaxo Footwears Ltd.](#),

10. It would be expedient to reproduce section 36(1)(iii) of the Act which reads thus:

36. Other deductions.-(1) The deduction provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28-

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(iii) the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession:

Provided that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset for extension of existing business or profession (whether capitalised in the books of account or not); for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction.

Explanation - Recurring subscriptions paid periodically by shareholders, or subscribers in Mutual Benefit Societies which fulfil such conditions as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause;

11. The effect of proviso to section 36(1)(iii) inserted by the Finance Act, 2003 w.e.f. 1-4-2004 relating to assessment year 2004-05 and subsequent years is to disallow interest on moneys borrowed for acquiring a capital asset till the date on which the asset was brought to use even if it is for extension of existing business.

12. After considering the issue, we do not find any substance in the contention of the learned counsel. It would at the first place be quite apt to have a glimpse of the dictionary meanings of the two words. According to Chambers 21st Century Dictionary, the meaning of word "Extension", inter alia, is the process of extending something or the state of being extended, an added part that makes the original larger or longer whereas the meaning of the word "expansion" is the act or state of expanding. The distinction between "Extension" and "Expansion" as has been sought to be projected by the assessee does not carry any persuasion as there is no real distinction between the two as suggested by the counsel. Even if the distinction as professed by the learned counsel in the terms "Extension" and "Expansion" is taken to exist still the plea of the assessee does not inspire acceptance as "Expansion" would be wider and embrace "Extension" within it. The Tribunal had recorded a finding of fact that there was extension of the assessee's business as it had purchased the assets for the same by borrowing capital from the banks and, therefore, it was not entitled to deduction u/s 36(1)(iii) of the Act. The relevant observations of the Tribunal, in para Nos. 20 and 21 of the order are as under:

20. The facts of the present case before us are that the assessee was running a unit with spindle capacity 153664 spindles which was increased to 201664 spindles by putting up new machinery. This exercise of increasing the capacity amounts to the

process of enlarging and/or extending the existing capacity and hence is a case of extension of existing business. It can by no stretch be called as acquisition of assets for the existing business as even in the director's report, the managing director talks about the changing global textile scenario, and the role of capacities and up-gradation of technology in the success of business which was the instrument for increasing the spindle capacity which, in turn, was to be financed by the term loan raised by the assessee-company during the year. In the facts before the Hon'ble Delhi High Court in Modi Industries Ltd.'s case (supra) relied upon by the assessee, person was engaged in the business of manufacture of diverse items and a new item was added to its manufacturing business, whereas there was complete unity or control and utilisation of common funds and it was held that the business of manufacturing of new items was an extension of the business and not a new business. In the facts before us, though the same line of business is being carried on but scope of production has been enlarged by increasing the spindle capacity and the same is extension of business by the assessee. Consequently, the provisions of proviso to section 36(1)(iii) are applicable in the case.

21. The plea of the assessee before us was that the increased capacity amounts to expansion of business, and is not extension of business envisaged in the proviso to section 36(1)(iii). The dictionary meaning of the word "expand" or as per the Concise Oxford English Dictionary is "to make or become larger or more extensive" and the meaning of the word "expansion" is "the action or an instance of expanding". In view thereof the two words "expansion" and "extension" are synonymous and even if it be taken as expansion, as contended by the assessee, it is not different from extension of business and consequently the application of the proviso to section 36(1)(iii) of the Act is justified. In the entirety of facts and circumstances and in view of the machinery not being put to use, the interest expenditure on the utilisation of borrowed funds for the acquisition of new assets, from the date of its acquisition till the date when machinery is put to use, is disallowable. Accordingly, we uphold the order of CIT(A) and dismiss the ground No. 3 raised by the assessee.

13. In view of the above well reasoned observations of the Tribunal and the fact that the judgments relied upon by the learned counsel do not support the case of the assessee being based on individual factual situation involved therein, no substantial question of law arises in this appeal. Accordingly, finding no merit in the appeal the same is dismissed.