IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.A. No.153 of 2016 (O&M)
DATE OF DECISION: 21.07.2016

M/s Thukral Regal Shoes

.....Appellants

versus

Commissioner of Income Tax-I, Chandigarh and another

.....Respondents

CORAM:- HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. M.R. Sharma, Advocate for the appellants

Ms. Urvashi Dhugga, Advocate for the respondents

..

S.J.VAZIFDAR, ACTING CHIEF JUSTICE:

This is an appeal against the order of the Income Tax Appellate Tribunal relating to the Assessment Year 2009-10. Five questions are raised in the appeal, but only question No.(iii) was pressed at the hearing. It reads as under:-

> "iii) Whether in the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has grossly erred in upholding the order of the Assessing Officer and order of the Commissioner of Income Tax (Appeals), Chandigarh with regard to the disallowance of interest amounting to Rs.28,70,608/- u/s 36(1)(iii) of the Income Tax Act which is the actual expenditure incurred by the appellant but neither allowed as a deduction u/s 36(1)(iii) as business expenditure nor treated as capital expenditure?"

The appeal is admitted on the above substantial question of law.

2. The appellants - a partnership firm sought a deduction under Section 36(1)(iii) of the Income Tax Act, 1961, in respect of the interest paid by them. The appellants contended that they had

::: Downloaded on - 11-09-2020 11:52:47 :::

raised loans at interest and had, in turn, advanced interest free loans to their partners to enable them to purchase properties in their names. It was contended before us that these properties were purchased by the partners to enable them in turn to make them available to the appellants for the purpose of their business.

3. The Assessing Officer found that the properties had not been put to use and, therefore, disallowed the deduction in view of the proviso to Section 36(1)(iii). Accordingly, the Assessing Officer disallowed the proportionate interest relating to investments allegedly made in the properties. The disallowance of Rs.56,51,346/- included interest in the sum of Rs.28,70,608/- which has been disallowed in view of the provisions of Section 40a(ia) which has not been challenged before us. The question of law before us, therefore, pertains only to the balance amount of Rs.27,80,738/- which was disallowed in view of the proviso to Section 36(1)(iii).

The CIT (Appeals) rejected the appellants' contention that the issue had been settled against the department in the earlier assessment year. Whether this is so or not is immaterial as far as the appeal before us is concerned. The appellants relied upon the order of the Income Tax Appellate Tribunal for the Assessment Year 2007-08. The department had filed ITA No.228 of 2012 against that order. However, the tax effect being less than Rs.20 lakhs, the appeal was allowed to be withdrawn by an order dated 10.02.2016 in view of Circular No.21/2015 dated 10.12.2015 issued by the CBDT. The withdrawal of ITA No.228 of 2012 cannot, therefore, preclude the department from raising the contentions in this appeal.

::: Downloaded on - 11-09-2020 11:52:48 :::

The Tribunal, by the impugned order, confirmed the assessment order and the order of the CIT (Appeals).

4. To reiterate, the appellants' case is this. The appellants had borrowed funds from institutions and banks in order to advance the same to their partners. The appellants paid interest to the bank and the financial institutions in respect of the funds borrowed. The appellants did not charge their partners interest in respect of the loans advanced to their partners. The partners utilized the loan for the purchase of commercial assets in order to make the same available to the appellants in respect of the appellants' business. The appellants claimed a deduction in respect of the interest under Section 36(1)(iii).

5. We will assume the assessees' case on facts to be true. It would make no difference on account of the fact that the appellants had not put these properties to use.

Section 36(1)(iii) was introduced by the Finance Act, 2003, with effect from 01.04.2004. The Proviso to Section 36(1)(iii) was introduced by the Finance Act, 2003, with effect from 01.04.2004 and, therefore, applies to the appeal which pertains to the Assessment Year 2009-10. The section prior to its amendment by the Finance Act, 2015 with effect from 01.04.2016 falls for consideration as this appeal pertains to the Assessment Year 2009-10. It reads as follows:-

> "36. (1) The deductions 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-
>
> …. …. …. ….
>
> (iii) the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession:

::: Downloaded on - 11-09-2020 11:52:48 :::

> 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."

6. We have assumed the appellants' case on facts to be well-founded. We would further assume that the interest was paid by the appellants in respect of the capital borrowed for the purpose of their business despite the fact that the appellants in turn advanced the amounts to their partners without charging interest, for the arrangement was to enable the partners to purchase the properties and make the same available for the appellants' business. We will, therefore, assume that the appellants have also established commercial expediency in respect of this business arrangement by the acquisition of the property. The matter, however, does not end there.

7. The proviso to Section 36(1)(iii) was introduced by the Finance Act, 2003, with effect from 01.04.2004 and, therefore, applies to the appeal which pertains to the Assessment Year 2009-10. In our view, the deduction was liable to be disallowed in view of the proviso to Section 36(1)(iii) for the assets that were purchased by the partners were not put to use at least during the assessment year in question. The appellants have failed to establish that the properties purchased by their partners were put to use during the relevant period.

8. Mr. M.R. Sharma, the learned counsel appearing on behalf of the appellants, however, contended that the proviso is not applicable to this case as the assets were not purchased by the appellants. He contended that the proviso applies only to cases

::: Downloaded on - 11-09-2020 11:52:48 :::

where the assessee itself purchases the asset. The submission is not well-founded.

9. Under the proviso, any amount of interest paid in respect of capital borrowed for acquisition of an asset for the 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 cannot be allowed as a deduction. The proviso relates, therefore, to capital borrowed for acquisition of an asset and not merely in respect of the capital borrowed for the purchase of an asset. The word "acquisition" is of wider amplitude than the word "purchase". A purchase is but one of the modes of acquisition. A property can be acquired even otherwise, such as, for instance, by way of lease or license. Black's Law Dictionary (Ninth Edition) defines "acquisition" as follows:-

> "acquisition, n. (14c) 1. The gaining of possession or control over something ….. ….. .. ."

10. Possession of rights and interest in an asset can be gained in several ways and not merely by the purchase thereof. It can be gained for instance by virtue of or under a lease, licence or on rent. If the legislature intended restricting the ambit of the proviso to capital borrowed for the purchase of an asset, it would have provided so expressly. The legislature has deliberately used a wider expression "acquisition of an asset" to ensure that assessees do not get the benefit of a deduction unless and until they put such assets to use. There is nothing in the plain language of the section or otherwise that persuades us to hold that the legislature intended excluding all modes of acquisition of an asset other than by the purchase thereof.

::: Downloaded on - 11-09-2020 11:52:48 :::

Admittedly, the loan was taken by the appellants for the acquisition of the asset, namely, the said immovable properties.

11. The proviso does not operate only in cases where the assessee acquires the asset directly. The mode of acquisition is irrelevant and the proviso would apply so long as the primary intention of the assessee is to acquire the asset for the purpose of its business. We do not express any opinion where the acquisition of the asset is only incidental to the transaction or arrangement such as in the case of a merger of companies under Sections 391 and 394 of the Companies Act. In the present case, the appellants/assessees allegedly acquired the assets by advancing interest-free loans to their partners to enable the partners to purchase the assets and to make the same available to them for the extension of their existing business. The assessees are in the business, inter alia, of selling footwear. They contend that they required the additional premises or showrooms to sell the same. This was, therefore, in any event, an indirect acquisition of the asset by a particular mode. The sole intention was to acquire the assets.

12. The question of law is, therefore, answered in the negative in favour of the respondents/revenue.

The appeal is accordingly dismissed.

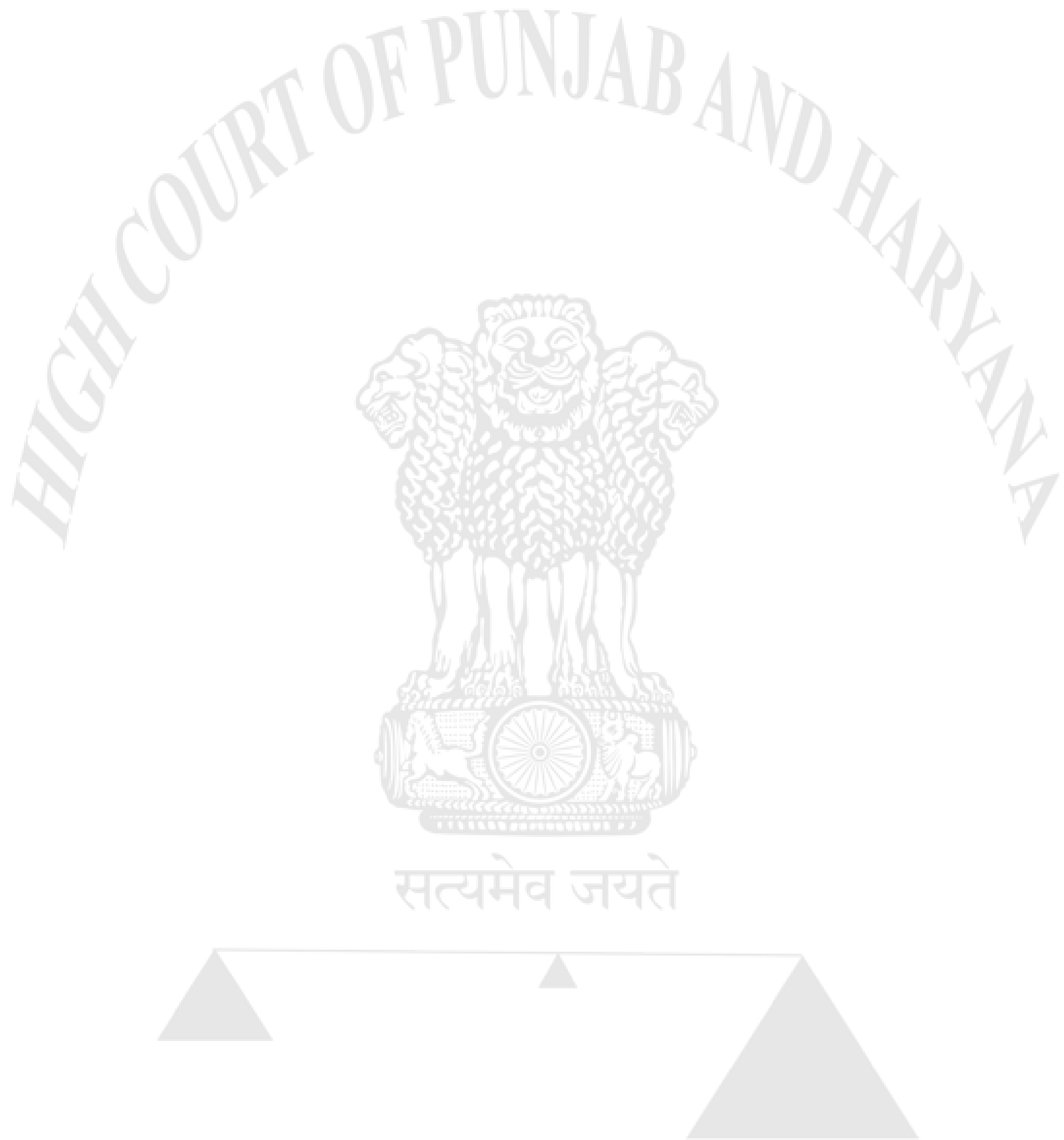
(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

21.07.2016
parkash*

(DEEPAK SIBAL)
JUDGE

Note: Whether reportable: YES

::: Downloaded on - 11-09-2020 11:52:48 :::



::: Downloaded on - 11-09-2020 11:52:48 :::