

**Case :-** INCOME TAX APPEAL No. - 26 of 2017

**Appellant :-** Commissioner Of Income Tax-Ii, Kanpur

**Respondent :-** M/S Ghari Industries Pvt. Ltd.

**Counsel for Appellant :-** Gaurav Mahajan

**Counsel for Respondent :-** Ashish Bansal

**Hon'ble Bharati Sapru,J.**

**Hon'ble Saumitra Dayal Singh,J.**

Heard Sri Gaurav Mahajan, learned Counsel for the appellant-department and Sri Ashish Bansal, learned Counsel for the assessee.

This appeal under Section 260A of the Income Tax Act, 1961 arises out of the order of Income Tax Appellate Tribunal dated 18.11.2009 for the assessment year 2006-07. The questions of law sought to be answered is hereunder:-

"Whether the Income Tax Appellate Tribunal was justified in law in dismissing the appeal filed by the Revenue holding that loan given to M/s Calcutta Detergents Ltd. was a trade advance and that the Assessing Officer had not been able to establish that there was a direct nexus between borrowed funds and the advance given, ignoring the vital facts that as on 31.03.2005 the assessee was not having any interest free fund at its disposal as the whole of the share capital and Reserves & Surplus was locked up in Assets and Business of the assessee and as on 31.3.2006 it was having surplus of Reserve of Rs. 6,48,06,156/- only, while the amount advanced was at Rs. 18,34,64,267/-. This clearly established that the interest bearing fund were advanced as Loan and thus there was direct nexus too between the borrowed fund and advance given."

We are told that against the aforesaid order of the Tribunal being common order for the assessment years 2005-06 and 2006-07, the department's appeal being Income Tax Appeal No.298 of 2011 for the assessment year 2005-06 has been dismissed vide order dated 19.01.2017 for the reason of below monetary limit.

The assessee is engaged in the manufacture and sale of leather shoe, leather and trading of detergents. Admittedly it had got certain quantities of detergent manufactured by a sister concerned M/s Calcutta Detergent Pvt. Ltd.

In the course of assessment proceedings the assessing officer noted that the assessee had advanced Rs.14,98,00,000/- to

M/s Calcutta Detergent Pvt. Ltd. Against the aforesaid advance, M/s Calcutta Detergent Pvt. Ltd made supplies of the detergent to the assessee of a value of Rs.7,36,87,732/- and the balance remained by way of advance under the head of sundry creditors.

In this backdrop the assessing officer noted that the further advance given by the assessee to M/s Calcutta Detergent Pvt. Ltd during the previous year relevant to assessment year 2006-07 whereby the total advance became Rs.18,34,64,267/-. In view of the fact that M/s Calcutta Detergent Pvt. Ltd was a sister concern and no interest had been charged therefrom. A disallowance was made under Section 40A(2) (b) read with Section 36 of the Income Tax Act of interest paid on borrowed funds.

On the contrary, the assessee's case was that M/s Calcutta Detergent Pvt. Ltd. was engaged in the activity of manufacturing branded detergent exclusively for the assessee. In view of the same the assessee claimed existence of commercial expediency for making advance to M/s Calcutta Detergent Pvt. Ltd.

Being aggrieved by the assessment order the assessee carried it before the CIT (Appeals), who by his order dated 21.05.2009 allowed the appeal of the assessee after accepting the contention with regard to the existence of commercial expediency for making advances. For ready reference the findings recorded by CIT (Appeals) in paragraph no.6 of its order are quoted hereunder:-

*"I have considered the facts and circumstances of the case as well as submission/arguments of the Ld. AR of the appellant. I agree with the AR of the appellant that the aforesaid trade advance was given to M/s Calcutta Detergent (P) Ltd keeping in view of the commercial business expediency since M/s Calcutta Detergents (P) Ltd was exclusively manufacturing the product of the appellant company and it was for the appellant company to decide the business interest. I also agree with the AR that the appellant company had sufficient share capital, Reserve, Surplus and current year profit etc of Rs.41 crores which were sufficient to cover the trade advance of Rs.18,34,64,267/-"*

Against the above order, the department went in appeal to the Tribunal, who vide its order has dismissed the appeal and upheld the finding of the CIT (Appeals) regarding commercial expediency and also the availability of surplus funds with the assessee for making the advances.

We have heard learned Counsel on both side and also perused the record.

From a perusal of the order passed by the CIT (Appeals) it is not disputed that M/s Calcutta Detergent Pvt. Ltd was engaged solely in manufacturing the goods namely branded detergent for the exclusive use of the assessee. Thus, the existence of commercial expediency cannot be doubted. The findings recorded by both the appellate authorities are based on perusal of evidence and cannot be faulted for that reason.

Sri Gaurav Mahajan, learned Counsel for the department has strenuously argued that the amount of advance made is disproportionate for the sale of goods of M/s Calcutta Detergent Pvt. Ltd. He submits that the disallowance was correctly made.

We are unable to accept the contention of Sri Mahajan for the reason that the issue of commercial expediency had been established and accepted by both the appellate authorities. No further test is possible to be applied to determine whether the amount of advance given is proportionate to the commercial expediency that had been established by the assessee especially when the Tribunal has further recorded that assessee had recorded sales of Rs.7 crore this year and Rs.44 crore next year.

In this regard the Hon'ble Apex Court in the case of **S.A. Builders Ltd. v. Commissioner of Income Tax (Appeals) and another** reported in **(2007) 288 ITR 1 (SC)** has held as under :-

"26.The expression "commercial expediency" is an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose

of business. The expenditure may not have been incurred under any legal obligation, but yet it is allowable as a business expenditure if it was incurred on grounds of commercial expediency.

35. We agree with the view taken by the Delhi High Court in CIT vs. Dalmia Cement (Bhart) Ltd. (2002) 254 ITR 377 that once it is established that there was nexus between the expenditure and the purpose of the business (which need not necessarily be the business of the assessee itself), the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize its profit. The income tax authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities must not look at the matter from their own view point but that of a prudent businessman. As already stated above, we have to see the transfer of the borrowed funds to a sister concern from the point of view of commercial expediency and not from the point of view whether the amount was advanced for earning profits."

We find that in this case the appellate authorities have gone into the facts of the case and, thereafter, reached the conclusion of existence of commercial expediency. The findings recorded by both the authorities are correct and no infirmity has been shown. Therefore, the questions of law raised in the memo of appeal are answered infavour of the assessee and against the revenue.

The appeal fails and is hereby dismissed. No costs.

**Order Date :-** 1.3.2017  
S.P.