



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA No. 328/2008**

Reserved on : July 23, 2009

Date of decision : July 24, 2009

COMMISSIONER OF INCOME TAX ... Appellant.
Through: Ms. P.L. Bansal with Ms. Anshul
Sharma, Mr. Paras Chaudhary,
Advocates.

VERSUS

H.B. STOCK HOLDINGS LIMITEDRespondent
Through: Mr. Santosh K. Aggarwal, Advocate

CORAM:
HON'BLE MR. JUSTICE A. K. SIKRI
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

% **JUDGMENT**

VALMIKI J.MEHTA, J.

1. This appeal under Section 260-A of the Income Tax Act, 1961 (hereinafter 'the Act') is preferred by the Revenue against the order dated



31.5.2007 of the Income Tax Appellate Tribunal (ITAT) whereby the ITAT accepted the appeal filed by the assessee/respondent and set aside the orders of the Assessing Officer and the CIT(Appeals).

2. There are two issues in this appeal. The first issue pertains to disallowance of the loss of Rs. 5,64,90,487/- by the Assessing Officer which was suffered by the assessee on account of the share transactions. The Assessing Officer disallowed it on the ground that the transactions were entered into with group concerns and the Assessing Officer doubted the genuineness. The second issue pertains to disallowance of the claim of deduction of interest of Rs. 83,77,871/- on the ground that the assessee had given interest free advances amounting to Rs. 13.05 crores to its sister concern M/s. Mount Finance Company Pvt. Ltd. The Assessing Officer was, therefore, of the view that the expenditure was not incurred by the assessee wholly, exclusively and necessarily for the purpose of its business and, therefore, he disallowed the same.

3. On the first issue with respect to the loss in the share transactions, the counsel for the Revenue has urged that the transactions in question were not genuine and the Assessing Officer was, therefore, right in disallowing these transactions. The counsel further urged that in case the ITAT felt that the transactions were genuine, it should have arrived at a finding or remanded the



matter back to the Assessing Officer to examine the transactions because was stated that the Assessing Officer had not examined the transactions and had merely relied upon the report of the Auditor of the Assessee Company that the accounts do not reflect a complete and true affairs of the company. The counsel for the appellant has also urged before this Court that the Assessing Officer correctly disallowed the claim of the interest.

4. We have heard the counsel for the parties.

5. On the issue with regard to the disallowance of Rs. 5,64,90,487/-, we find that the Assessing Officer was not justified in relying upon the report of the Auditor by which the Auditor had said that the accounts do not reflect the true and complete affairs of the company. This is only a half truth. The fact of the matter is that the Auditor of the assessee company has given such a remark in the Auditor's report because on account of a search and seizure operation carried out by the Income Tax Department at the business premises of the assessee various records/books/documents were seized. Therefore, the Auditor said that on the basis of the limited records, the report was being prepared and consequently they made the endorsement that they are not able to say that the accounts reflect the true and correct position. We note that in this regard the ITAT has observed that it was a strange position indeed for the Assessing Officer to simply accept the report of the Auditor, because, the



seized material could have been examined by the Assessing Officer and he was not competent to form an opinion on the same as to the genuineness of the transactions which he unfortunately did not. The ITAT rightly observed that on the one hand the Assessing Officer kept the records with himself and on the other hand he blamed the assessee and which was clearly a travesty of justice. The learned counsel for the respondent during the course of the arguments has referred to the written submissions and the documents relied by him before the CIT(A) and which showed the genuineness of the share transactions of the assessee company and which documents showed that the transactions were entered into at market value, proof of the market quotations were filed, the transactions were through share brokers through the Stock Exchange. There is no allegation that the transaction is not at the market price and something over and above declared price had been recovered by the assessee. In fact, the Assessing Officer applied unfairly the pick and choose policy because in respect of the transactions with the same party which resulted in profit, the same was brought to tax but when the loss was claimed the Assessing Officer ignored the same on the ground that the same is sham. We note that in para 34 of the order of the ITAT the ITAT has also examined the transactions on the basis of pages 22 to 30 of the paper book before it and has given its opinion as to the genuineness of the transaction. The contention for



the Revenue that the ITAT has, therefore, not applied its mind to the record and transactions are, therefore, clearly not correct. In fact, as stated above, even the CIT(A) had duly applied its mind to the transaction by reference to the record which was produced by the Assessee.

6. On the second issue of the disallowance of the interest, we again find that the stand of the Department is misconceived. This is because it is a finding of fact recorded by both the CIT(A) and ITAT that the loan which was given to the sister company was before the loan which was taken by the assessee company from the Standard Chartered Bank. The ITAT has examined the copy of the account of M/s. Mount Finance Company Pvt. Ltd. for the financial year 1.4.1996 to 31.3.1997 which revealed that the advance was given to M/s. Mount Finance Company Pvt. Ltd. prior to the commencement of the relevant year and the amount which was borrowed from the Standard Chartered Bank was on or around 23.7.1996. Thus, in fact the Revenue is also incorrect in contending that there is a nexus between the loan given by the assessee company to its sister concern and the loan which it availed from Standard Chartered Bank. In fact, as on 31.3.1996, the own funds of the assessee included share capital of 24.3 crores and reserves and surplus in the form of share premium money to the extent of 106.92 crores. Consequently, there were enough funds with the assessing company to give loan of Rs.



13,05,29,268/- to its sister concern M/s. Mount Finance Company Pvt. Ltd. and the deduction for interest was allowable to the assessee under Section 36(1)(iii) of the Act. We also note that the counsel for the assessee has rightly relied upon the decision of the Supreme Court in the case ***S.A. Builders Vs. CIT, 288 ITR 1 (SC)*** wherein the Supreme Court had said that a company is fully entitled to give a loan to its subsidiary company and which can be done for business expediency. To such a transaction, the Income Tax Department can have no objection. We also note that the counsel for the respondent has also relied upon ***CIT vs. DCM Ltd., (2009) 177 Taxman 300 (Delhi)*** to the same effect.

7. In view of the above, no substantial question of law arises and the appeal is, therefore, dismissed.

VALMIKI J.MEHTA, J

A. K. SIKRI, J

JULY 24, 2009

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