



#5 to 14

% **19.07.2011**

Present: Mr. Sanjeev Rajpal, Advocate for the appellant in item 5 to 9.
Ms. Rashmi Chopra, Advocate for the appellant in item no.10 to 14.
Mr. M S Syali, Sr. Advocate with Mr. Mayank Nagi, Mr. Rahul Sateja and Ms. Husnal Syali, Advocates for the respondent.

(Common Order)

+ITA Nos.1062/2009, 1772/2010, 1826/2010, 1827/2010, 90/2010, 1165/2010, 1166/2010, 1167/2010, 1169/2010 & 1172/2010

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In all these appeals which pertain to different assessment years relating to the same assessee, similar issue raised which is common to all these assessments. The Assessing Officer was of the view that the aforesaid interest free advances were made by its overdraft account which is not a manufacturing company but was engaged in the business of finance for the accommodation of sister concern. On this ground to the extent of advance given by the assessee to its sister concern, interest paid by the assessee on the overdrafts allowance was disallowed and additions made. The CIT (Appeal) deleted the aforesaid additions substantially except Rs.30,000/-. The ITAT has however deleted the additions entirely and appeal of the assessee was allowed and cross objections of the assessee was allowed and appeal preferred by the revenue was heard. A perusal of the detailed order passed by the ITAT would reveal that the department had relied upon the judgment of Punjab and Haryana High Court in the case of **CIT Vs. Abhishek Industries Ltd.** 286 ITR page 1 to support his contention



that onus to prove that the advance given by the assessee to its sister concern was from its own funds and not from the amount of overdraft account. This contention predicated on the aforesaid judgment has been rejected by the Tribunal taking note of the fact that as far as this is concerned, it had taken contrary view in **CIT Vs. Tinbox** 260 ITR 637. In fact, Punjab and Haryana High Court in its decision in **CIT Vs. Abhishek Industries Ltd.** (Supra) has specifically disagreed with the aforesaid decision. It would also be of the interest that similar view was taken by this Court in **CIT Vs. Orissa Cement Ltd.** 252 ITR 878, which judgment is also mentioned taken note by the Punjab and Haryana High Court. The Tribunal was right in following the judgment of this Court being jurisdictional High Court. The aforesaid judgments of this Court are binding on us as well.

In fact, the aforesaid view has been recently reiterated by this very Bench of this Court in **CIT Vs. Bharti Televenture Ltd.** 331 ITR 502.

In view thereof, no substantial question of law arise and accordingly, all these appeals are dismissed.


A.K. SIKRI, J.


M.L. MEHTA, J.

JULY 19, 2011/vld