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

+ ITA 1250/2011

CIT

..... Appellant

Through Mr. Kamal Sawhney, Adv.

versus

NARANG INDUSTRIES PVT LTD

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.V.EASWAR

ORDER

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09.12.2011

This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (Act, for short) is directed against the order of the Income Tax Appellate Tribunal (for short, the tribunal) in the case of M/s Narang Industries Private Ltd. The appeal pertains to the assessment year 2003-04.

2. Several issues have been decided by the tribunal in the impugned order dated 8th April, 2011. The Revenue has preferred the present appeal only in respect of one ground i.e., the addition of Rs.1,59,28,955/- made by the Assessing Officer on account of interest and financial charges. The contention of the Revenue is that the interest paid should be disallowed under Section 36(1)(iii) of the Act. The said provision reads as under:-



“36. Other deductions.—(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—

X X X X X X

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

3. The Assessing Officer while making the aforesaid addition has given the following reasoning:-

“The reply of the assessee has been duly considered and it is found that it was just a colourable device by the assessee company to subsist its subsidiary company while saddling itself with huge financial burden. Before proceeding further on the issue it is necessary to examine whether assessee’s partaking its distillery business was out of any business prudence or aimed at reducing its tax burden. There is no denying the fact that M/s Narang Distillery Ltd. is a wholly owned subsidiary of the assessee company & in spite the distillery business of the assessee company being sold off, the management and control of its subsidiary company still remained with those key persons which controlled the assessee company without changing the ground reality. Without de-facto changing the ground reality the assessee company had transferred its distillery business to its subsidiary company along with its existing employees. By passing a simple Board Room Resolution, the assessee company had not only claimed an interest liability of Rs.1,59,28,955/- but had also claimed deduction of Rs.65,62,103/- on account of provision for gratuity. In the following paragraphs this issue will be spelt out more elaborately.”



4. CIT (Appeals), however, deleted the said addition. The aforesaid deletion has been upheld by the impugned order passed by the tribunal.
5. The facts noticed by the CIT (Appeals) and the tribunal, are that the respondent had borrowed money for a term loan and working capital requirements. During the last assessment year, the respondent had paid an amount of Rs.1,53,99,329/- towards interest and finance charges.
6. The assessee had transferred the brewery business in the assessment year 2001-02 to its subsidiary Narang Brewery Ltd. for Rs.8,10,00,000/-. In lieu of the consideration, the respondent was allotted 1,34,400 equity shares of Rs.10/- each fully paid up and Rs.7,96,56,000/- was treated as received towards share application money. Later on South African Breweries International (Asia) BV formed a joint venture with the respondent and a company called South African Breweries (India) Pvt. Ltd. was incorporated after FIPB approval. The said joint venture later on took over the brewery business from Narang Brewery Ltd. It was, therefore, pointed out that there was no nexus between the loan and the working capital requirements taken by the respondent and the share application money in Narang Brewery Ltd. or in the joint venture company. The said factual position is not disputed.



7. The respondent also had a distillery business. The distillery business was hived off to Narang Distillery Ltd. on 5th December, 2002 against which 19,50,000/- equity shares of Narang Distillery Ltd. of Rs.10/- each amounting to Rs.5,58,67,500/- were allotted. Narang Distillery Ltd. was subsidiary to the respondent. The respondent had made investment of Rs.5,63,67,500/- in Narang Distillery Ltd. It is also recorded by the appellate authorities that the respondent later on sold their share holding in Narang Distillery Ltd. for Rs.6,00,00,000/- during the assessment year 2004-05. After considering the said aspect, both the CIT (Appeals) and the tribunal have observed that there is no co-relation whatsoever between the utilization of the term loan and the credit facilities on which the respondent had paid finance charges and interest and the so called investments had been made by the respondent during the assessment year in question. The Assessing Officer while disallowing the said payment of interest and financial charges of Rs.1,59,28,955/-, had failed to notice and given due credence to the fact that in the preceding year the assessee had made payment of Rs.1,53,99,329/-. There was increase of about Rs.7 lacs towards interest payment this year, but the term loan and the credit facility had continued from the last year. Further, the assessee had declared a loss of Rs.1,88,22,670/- in the return filed for the assessment year in



question. Lastly, the Assessing Officer had held that Narang Distille
Ltd. is a wholly owned subsidiary of the respondent and had a common
management. There is contradiction in the finding recorded by the
Assessing Officer that involvement of the respondent in Narang
Distillery Ltd. cannot be regarded as on account of business
consideration.

The appeal is accordingly dismissed. No costs.

SANJIV KHANNA, J.

R.V.EASWAR, J.

DECEMBER 09, 2011
NA