

## No disallowance of interest if borrowed sum was given to affiliate without any interest for commercial expediency

**Summary – The High Court of Punjab & Haryana in a recent case of Bright Enterprises (P.) Ltd., (the Assessee) held that where assessee-company and its sister concern were in hotel business and assessee advanced an amount to sister concern free of interest on account of commercial expediency and same was used by sister concern for purpose of business, disallowance of interest paid by assessee on loans taken from banks was not justified**

### Facts

- The assessee had advanced a certain sum to its sister concern.
- The Assessing Officer disallowed the interest paid by the assessee to the bank and added the same back to the assessee's income observing that the advance to the assessee's sister concern did not appear to be for business purposes as the assessee-company had no business dealing with the sister concern.
- On appeal, the Commissioner (Appeals) allowed the assessee's appeal by holding that the assessee and its sister concern were in the hotel business and the advance was as a measure of commercial expediency and only for the purpose of the business of the sister concern.
- On second appeal, the Tribunal rejected the assessee's case and set aside the order of the Commissioner (Appeals).
- On appeal :

### Held

- The doubt, if any, is set at rest by the memorandum of appeal and the written submissions filed by the assessee before the Commissioner (Appeals). In the memorandum of appeal, the assessee expressly stated that it had advanced the amount to its sister concern as a measure of commercial expediency for the purpose of business. In the written submissions, the assessee *inter alia* stated that the assessee and the sister company were in the hotel business; that the Board of Directors of the two companies was the same; that the assessee purchased the shares of the sister company as an investment and that the investment and advances were made for the purposes of business. From the order of the Commissioner (Appeals), it is evident that the department never contended that the amounts were not advanced for commercial expediency. Nor was it contended that the amounts advanced were used by the sister company for any purpose other than for the purpose of its business. Indeed, such a case was not even advanced before the Tribunal.
- The Commissioner (Appeals) was, therefore, entirely justified in coming to the conclusion that the amount was advanced by the assessee to its sister concern on account of commercial expediency

and that the advance was used by its sister concern for the purposes of its business. The additional facts further establish the findings.

- The Tribunal's observation that there is nothing on record that the money advanced by the assessee to its sister company had been used as a measure of commercial expediency, was not justified. The finding of the Tribunal is not based on any material.
- In the circumstances, the question of law is answered in favour of the assessee and against the department. The order of the Tribunal is set aside. The assessee shall be entitled to the deduction under section 36(1)(iii).