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## Book adjustments constitutes "actual payment" for the purpose of section 43B of the Income-tax Act, 1961

### In brief

In a recent decision in the case of Shakti Spring Industries Pvt. Ltd.<sup>1</sup> it was held by the Jharkhand High Court (HC) that discharging of a liability in a debtor and creditor relationship by virtue of book entry would constitute "actual payment" for the purpose of section 43B of the Income-tax Act, 1961 (the Act).

### Facts

- Shakti Spring Industries Pvt. Ltd. (the company) was entitled to subsidy from Bihar State Financial Corporation (BSFC).
- The company had also borrowed loan from BSFC and was liable to pay interest on the same.
- BSFC made a book entry and adjusted the amount of interest receivable with the amount of subsidy payable to the company. In other words, BSFC netted-off its liability towards subsidy payable to the company against the interest receivable from the company.
- The company claimed that the above mode of discharging its interest liability constituted actual payment and not liable to be disallowed under section 43B(d) of the Act.

<sup>1</sup> CIT v. Shakti Spring Industries Pvt. Ltd. [TS-4-HC-2013(JHAR)]

## Revenue's contentions

The revenue contended that the interest payable by the company was paid by way of a book adjustment entry, and hence, did not constitute "actual payment" for the purpose of section 43B of the Act. Accordingly, the disallowance was to be confirmed under section 43B(d) of the Act.

## Tribunal Ruling

- The Tribunal held that instead of making the payment of subsidy payable to the company and separately recovering the interest on loan receivable from the company, the payment of interest had been effected by a book adjustment and therefore, there is effective payment of interest on loan to BSFC.
- Effective payment of interest by the company on the loan taken from BSFC cannot be denied thus, disallowance under section 43B(d) of the Act is not correct.

## Issue before the HC

Whether the Tribunal was justified in holding that disallowance under section 43B of the Act will not be triggered where the payment of interest liability to State Financial Corporation is claimed to have been made by a book adjustment and not by actual payment.

## HC Ruling

The HC upheld the Tribunal order and dismissed the revenue appeal. It observed as under:

- Revenue had misconstrued the word "actual payment".

- Actual payment does not mean actual receipt and delivery of the currency by the two parties transacting when they are both creditor and debtor for each other.
- Under section 43B(d) of the Act, if the interest is paid not by actually receiving amount from the loan advancing person or institution but is paid out of funds lying in another account of the company with such creditor (BSFC) then it amounts to actual payment.

Based on the above, the HC held that payment of interest to BSFC by way of a book entry adjustment against the amount due to the company constituted "actual payment" of interest liability for the purpose of section 43B of the Act and no disallowance under section 43B in respect of such interest is warranted.

## Conclusion

The Court distinguished "actual payment" under section 43B of the Act from payments by cash, cheque or draft. Hence, discharging of interest liability by book entry is per se not disallowable under section 43B of the Act and the above case is an instance supporting this view.

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