

आयकर अपीलिय अधिकरण, इन्दौर न्यायपीठ, इन्दौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND SHRI O.P. MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A. No. 297/Ind/2013

निर्धारण वर्ष /Assessment Year: 2008-09

Dy. Commissioner of Income Tax 1(1)

Ujjain :: अपीलार्थी /Appellant

Vs

Smt. Namita Patwa

Dewas

PAN – AJAPP1214C :: प्रत्यर्थी/Respondent

CO No. 77/Ind/2013

Arising out of ITA No. 297/Ind/2013

Smt. Namita Patwa

Dewas :: Objector

Vs

Addl. Commissioner of Income Tax

Range 1, Ujjain :: Respondent

आ.अ.सं./I.T.A. No. 410/Ind/2013

निर्धारण वर्ष /Assessment Year: 2009-10

Dy. Commissioner of Income Tax 1(1)

Ujjain :: अपीलार्थी /Appellant

Vs

Smt. Namita Patwa

Dewas

PAN – AJAPP1214C :: प्रत्यर्थी/Respondent

CO No. 79/Ind/2013
Arising out of ITA No. 410/Ind/2013

Smt. Namita Patwa

Dewas

::

Objector

Vs

Addl. Commissioner of Income Tax

Range 1

Ujjain

::

Respondent

राजस्व की ओर से/Revenue by	Shri Mohd. Javed
निर्धारिती की ओर से/Assessee by	Shri S.S. Deshpande
सुनवाई की तारीख Date of hearing	9.5.2017
उद्घोषणा की तारीख Date of pronouncement	25.2.2017

आदेश /O R D E R

PER SHRI C.M. GARG, JM

The revenue has filed these appeals whereas the assessee has filed cross objections challenging the orders of the first appellate authority, Ujjain, dated 25.2.2013 and 28.3.2013 for the assessment years 2008-09 and 2009-10, respectively. Since common grounds are involved, these appeals and cross objections are being disposed of by this consolidated order for the sake of convenience.

2. Following grounds have been taken by the revenue in the appeal for the assessment year 2008-09 :-

- “1. *Whether on the facts and in the circumstances of the case the ld. CIT(A) was justified in deleting the addition of Rs.27,86,037/- out of the addition of Rs. 34,82,537/- made by the A.O. on account of bogus commission payment even when assessee failed to establish the genuineness of such claim. It is to be noted that as per the settled judicial principles payment has to be proved by the assessee while claiming an expenditure.*
2. *The ld. CIT(A) sustained the addition of Rs.11,52,168/- instead of the total addition of Rs. 36,44,271/- made by the A.O. on account of disallowance of travelling expenses. Whether on the facts and in the circumstances of the case the ld. CIT(A) was justified in giving partial relief to the assessee even when assessee failed to discharge her responsibility to prove the genuineness of travelling expenses. It is to be noted that as per the settled judicial principles payment has to be proved by the assessee while claiming expenditure.*
3. *Whether on the facts and in the circumstances of the case the ld. CIT(A) was justified in deleting the addition of Rs. 5,45,822/- under section 68 without examining the creditworthiness and genuineness of the said transaction.*

3. Following grounds have been taken by the assessee in the cross objection for the assessment year 2008-09 :-

- “1. *The ld. CIT(A) has erred in maintaining the addition of Rs.6,96,500/- in respect of commission paid to various parties.*
2. *The ld. CIT(A) has erred in maintaining the addition of Rs.11,52,168/- out of travelling expenses. It was proved*

before the ld. CIT that the said expenses incurred were genuine and for the purposes of the business. The addition may please be deleted.

3. *The order of the ld. CIT(A) be maintained on grounds allowed by him.”*

4. Following grounds have been taken by the revenue in the appeal for the assessment year 2009-10 :-

- “1. *Whether on the facts and in the circumstances of the case the ld. CIT(A) was justified in deleting the addition of Rs.34,55,809/- out of the addition of Rs. 43,19,761/- made by the A.O. on account of bogus commission payment even when assessee failed to establish the genuineness of such claim. It is to be noted that as per the settled judicial principles payment has to be proved by the assessee while claiming an expenditure.*
2. *Whether on the facts and in the circumstances of the case the ld. CIT(A) was justified in giving partial relief to the assessee of Rs.33,66,941/- out of total addition of Rs.48,27,028/- made by the A.O. even when assessee failed to discharge her responsibility to prove the genuineness of travelling expenses. It is to be noted that as per the settled judicial principles payment has to be proved by the assessee while claiming an expenditure.*
3. *Whether on the facts and in the circumstances of the case the ld. CIT(A) was justified in deleting the addition of Rs.75,000/- on account of interest on unsecured loan u/s 68 without examining the creditworthiness and genuineness of the said transaction. It is to be noted that on the same issue department is in appeal in the case of the same assessee for A.Y. 2008-09 before Hon'ble ITAT, Indore.*

5. Following grounds have been taken by the assessee in the cross objection for the assessment year 2009-10 :-

- “1. The ld. CIT(A) has erred in maintaining the addition of Rs.8,63,952/- in respect of commission paid to various parties.*
- 2. The ld. CIT(A) has erred in maintaining the addition of Rs.14,60,087/- out of travelling expenses. It was proved before the ld. CIT that the said expenses incurred were genuine and for the purposes of the business. The addition may please be deleted.*
- 3. The order of the ld. CIT(A) be maintained on grounds allowed by him.”*

6. Since common grounds are involved in all these appeals and cross objections, we would like to dispose of ITA No. 297/Ind/2013 for the assessment year 2008-09 first as a model.

ITA No. 297/Ind/2013 : A.Y.2008-09

7. Ground no. 1 of the revenue's appeal relates to deletion of addition of Rs. 27,86,037/- out of the addition of Rs.34,82,537/- made by the Assessing Officer on account of bogus commission payment.

8. The facts, in nutshell, are that the assessee debited commission expenditure amounting to Rs. 34,82,537/- to the P&L account. It was the claim of the assessee that she had paid

commission to agents on account of material supplied in different industries through them. The Assessing Officer found that the assessee has not entered into any written agreement with the agents and commission was said to be based on some specified percentage on sales as per the oral terms and conditions. The Assessing Officer required the assessee to explain the same in response to which it was stated by the assessee that commission was paid for procuring orders and supplying material in different factories. It was also stated that the employees of the assessee approach persons working in the purchase departments of client companies and contact persons who are in a position to give orders or influence the orders after making payment of commission to them. On consideration of the submissions of the assessee, the Assessing Officer did not find any force in the same and accordingly disallowed the entire commission expenses claimed by the assessee.

9. Against the disallowance made by the Assessing Officer, the assessee approached the Commissioner of Income Tax (Appeals) by way of filing first appeal before him. On consideration of the submissions of the assessee in the wake of the facts of the case and

the legal position, the Commissioner of Income Tax (Appeals) deleted the addition of Rs. 27,86,037/- out of the total addition of Rs. 34,82,537/-. Now the assessee is in appeal before the Tribunal.

10. We have heard the arguments of both the sides and carefully considered the relevant material placed on record of the Tribunal, inter alia, paper books filed by the assessee and the impugned assessment order and the first appellate order. From the order of the Commissioner of Income Tax (Appeals) dated 25.2.2013 we observe that the Commissioner of Income Tax (Appeals) has granted relief to the assessee by observing as under :-

“ 3.2.5 I have considered the finding of the A.O. and the written submission of the appellant carefully. The A.O. has disallowed entire commission expenditure which is not justified. The A.O. has called for independent information from the parties during the A.Y. 2008-09 in the case of the appellant and they have confirmed the involvement of commission agent except four parties who have denied involvement of any liaison agent. The turnover of the appellant company was increased during the year under consideration whereas expenses were increased

slightly on account of commission compared to preceding year in proportion to sales. A.O. could not decide the business need of the appellant he has only to see that expenses should be incurred wholly and exclusively for the business purposes. In the absence of written agreement with the commission agent and sales to the same parties in the subsequent year could not make the expenses ingenuine or not incidental to business. The appellant has furnished evidences in support of the expenses incurred on account of commission which was not considered by the A.O. It has also filed the confirmation and copies of the return of the major commission agents. The appellant has placed reliance on the various decision of Hon'ble Apex Court, Hon'ble M.P. High Court, Hon'ble ITAT Indore Bench, Indore etc. In the case of CIT vs. Dhanrajgiri Raja NMarsingirji (1973) 91 ITR 544 (SC) Hon'ble Apex Court held that :

“It is not open to prescribe what expenditure an assessee should incurred and in what circumstances he should incur expenditure. Every business businessman knows his interest best.”

3.2.6 *In the case of Hemraj Nabhomal Sons vs. CIT(2005) 278 ITR 345 (MP) Hon'ble M.P. High Court has taken a view that –*

“Once the aforementioned conditions are found satisfied, then it is not proper on the part of A.O. i.e. taxing authorities to probe on the question as to whether the expenditure was legitimate or necessary etc. This type of inquiry is neither contemplated nor called for. It is only when the A.O. finds that claim so made is bogus or false or not incurred as a fact, it can be disallowed, else not.”

3.2.7 *In the case of Ravi Marketing (P) Ltd. vs. CIT on 18 January, 2005 equivalent citations : (2005) 198 CTR Cal 354, 2006 280 ITR 519 Cal. Hon'ble Court held that :*

“Whether an expenditure, expedient for the purpose of promotion of sales or the business and the amount and the manner in which to be expended is to be looked at by the authorities below under the IT Act or the Court from the viewpoint of the assessee not from its armchair the assessee knows his business. It is his success or failure in the business

which is material to him. It is not for the Court or the IT authority to suggest or advice to presume or surmise as to the expedience. What the authorities under the Act can do is that they can examine the genuineness of the expenditure and the purpose for which it was expended. Once it is established that the amount was genuinely expended and it was expended for a particular purpose, the only discretion that is left to the authority under the Act is to apply the law on the basis of such established fact or finding. If the purpose for which it is expended is eligible for deduction under a particular head no discretion is left to the authority either to surmise with the quantum that ought to have been spent or to surmise or presume the purpose differently and convert the same under some other head”

3.2.8 In the case of Prochem Laboratories Pvt. Ltd. vs. ACIT (Trib Indore) Hon'ble ITAT, Indore Bench, Indore held that :-

“U/s 37 of the Income Tax Act, 1961 – Commission paid by assessee to unrelated concern (agent) for procuring order – A.O. held that there was no written agreement for such

payment, agent had its own business and was not engaged in providing agency service and the manager of one of the customer did not knew the agent – Commission was also paid by sister concern to same agent which was disallowed by A.O. but addition in case of sister concern was deleted by cIT(A) – Held – There is no need of written agreement – turnover has substantially increased due to agent – Agent is an unrelated party who is regularly assessed to tax and has offered the commission in its return – Commission is allowable.”

3.2.9 The appellant has also placed reliance on the decision of Hon'ble ITAT, Indore Bench, Indore in the case of Sahani Trading Co. vs. ACIT (2012) 20 ITJ 773 in which Hon'ble ITAT has allowed payment of commission as turnover of the appellant company was substantially increased and commission was paid by cheque after deducting TDS.

3.1.10 It is not the case of A.O. that appellant has not paid any commission on sales. The appellant has paid commission in earlier and subsequent years. The nature of the appellant's

business requires such commission payment in a competitive market for achieving higher sales and for ensuring realisation of its sale process. Nothing has been brought on record by the A.O. to suggest that payment of commission was without business needs and payment of the commission is supported by the material placed on as discussed above. Considering the facts there was denial of four parties of involving any liaison agent in A.Y.2008-09 when A.O. has called for the information u/s 133(6) and non production of commission agents whom appellant has paid commission more than Rs. 1,00,000/- in spite of asking for the same by the A.O., although appellant has filed confirmations and copy of the returns of some of the commission agents, disallowance to the extent of 20% of commission expenses will meet end of justice. On the similar facts disallowance of 20% confirmed in the case of appellant in previous year 2008-09. Hence, add made by the A.O. is confirmed to the extent of Rs. 8,63,952/- and appellant will get relief of Rs. 34,55,809/-”

11. The learned DR supporting the action of the Assessing Officer submitted that the Assessing Officer has rightly held that merely because the assessee established the existence of agreement between him and his agents and the actual payment therein, it would not take away the jurisdiction or discussion of the Assessing Officer to consider whether the expenditure was genuinely and exclusively incurred for the purpose of business and whether the expenditure was commercially expedient. He further submitted that the Assessing Officer has elaborately dealt with the issue and the conclusion in para 3.15 of the assessment order as to why the expenditure was not incidental to or expedient for the purpose of business of the assessee. Therefore, the Commissioner of Income Tax (Appeals) was quite unjustified in granting part relief to the assessee.

12. Replying to the above, the learned counsel for the assessee submitted that it was not the case of the Assessing Officer that the assessee has not paid any commission on sales and undisputedly the assessee has paid commission in earlier and subsequent assessment years on the identical facts and circumstances as the

nature of the assessee's business required commission payment in the competitive market for achieving higher sales and for achieving realisation of sale process. The learned counsel for the assessee pointed out that the Assessing Officer has not brought on record any allegation to establish that the payment of commission was without business needs and it was supported by relevant material on record. The learned counsel for the assessee further submitted that despite the Commissioner of Income Tax (Appeals) accepting all the contentions of the assessee, he made ad hoc disallowance of 25% of total commission paid without any basis. Therefore, the part deletion made by the Commissioner of Income Tax (Appeals) may kindly be confirmed and part confirmation of disallowance made by the Commissioner of Income Tax (Appeals) without any reasoning and basis may kindly be allowed to the assessee.

13. On careful consideration of the above rival submissions, we are of the view that while granting part relief to the assessee the Commissioner of Income Tax (Appeals) has followed the ratio of the decision of ITAT, Indore Bench in the case of Sahni Trading Company vs. ACIT (supra) wherein the Tribunal has allowed

payment of commission by taking note of the fact that the turnover of the assessee company was substantially increased and the commission was paid by cheque after deducting TDS. In the present case, undisputedly the assessee made payment of commission on sales in the line of earlier and subsequent assessment years and the Assessing Officer has not disputed the fact that as per the requirement of the nature of the assessee's business, commission payment is a must to achieve higher sales in competitive market for realisation of sale proceeds. It is not the allegation of the Assessing Officer that the payment of commission was without any business need and per contra it is clear that the assessee submitted best possible material and evidence on record to support his claim. However, we cannot ignore the fact that four parties denied having involved as liasoning agents of the assessee and the assessee could not produce confirmations from two alleged commission agents on being specifically asked by the Assessing Officer. In the totality of facts and circumstances of the case, the Commissioner of Income Tax (Appeals) was quite correct and justified in allowing part relief to the assessee and in confirming the disallowance to the extent of 20% of commission expenses.

Therefore, in our considered opinion, we are unable to see any perversity or any other valid reason to interfere with the order of the Commissioner of Income Tax (Appeals) on this count and, hence, we uphold the same. Ground no. 1 of the revenue and ground no. 1 of the cross objection of the assessee are dismissed.

14. Ground no. 2 of the revenue's appeal is that the Commissioner of Income Tax (Appeals) was not justified in restricting the disallowance to Rs. 11,52,168/- instead of the total addition of Rs.36,44,271/- made by the Assessing Officer on account of disallowance of travelling expenses whereas ground no. 2 of the cross objection of the assessee is that the Commissioner of Income Tax (Appeals) has erred in maintaining the addition of Rs. 11,52,168/- out of travelling expenses.

15. Briefly stated, the assessee claimed travelling expenses of Rs.46,08,669/- on the ground that the travelling expenses have been incurred by her employees in connection with the assessee's business. On being asked by the Assessing Officer to produce the relevant bills and vouchers, the assessee could produce the supporting bills and vouchers to the extent of Rs.8,64,398/- which

were impounded by the Assessing Officer. The Assessing Officer again issued show cause notice asking the assessee as to why the remaining claim should not be disallowed in the absence of supporting bills and vouchers. In response, the assessee submitted that the remaining expenses had been incurred by way of internal vouchers submitted by the employees and the employees were carrying out the business on the assessee's vehicles also. The Assessing Officer did not accept this submission of the assessee and after allowing further allowance of Rs.1,00,000/- for the expense without supporting third party vouchers, the Assessing Officer allowed total travelling expenses at Rs. 9,64,398/- and balance expenses of Rs. 36,44,271/- were added back to the total income of the assessee.

16. Aggrieved, the assessee preferred first appeal before the Commissioner of Income Tax (Appeals). It was the contention of the assessee that the Assessing Officer has not taken any cognizance on the self-made vouchers which contained the details of the payments and travelling undertaken. The Commissioner of Income Tax (Appeals) on consideration of the submissions of the assessee,

restricted the disallowance to Rs.11,52,168/- after granting relief of Rs.34,56,501/-. Now the revenue is in appeal against the relief granted by the Commissioner of Income Tax (Appeals).

17. The learned DR contended that the Assessing Officer was right in making the disallowance of Rs.46,08,669/- as the assessee was able to produce supporting bills and vouchers to the extent of Rs.8,64,398/- only. The learned DR further submitted that the Assessing Officer was quite correct in allowing travelling expenses of Rs.9,64,398/- and balance expenses were rightly added back to the total income of the assessee. The learned DR further submitted that the Commissioner of Income Tax (Appeals) restricted the disallowance to the extent of Rs.11,52,168/- and granted part relief to the assessee without any basis. Therefore, the order of the Commissioner of Income Tax (Appeals) may kindly be set aside and that of the Assessing Officer restored.

18. Replying to the above, the learned counsel for the assessee submitted that the assessee placed bills and vouchers before the Assessing Officer and the Assessing Officer has not taken any cognizance of the self made vouchers, which were containing details

of payment and travelling undertaken by the assessee and staff members and complete vouchers were prepared and the books of the assessee contained all the necessary details of the journeys undertaken and payment made to respective persons. The learned counsel for the assessee strongly contended that the Assessing Officer in the remand report has accepted this fact. Therefore, the Commissioner of Income Tax (Appeals) was not correct and justified in making the disallowance of 25% of total travelling expenses without any basis.

19. On consideration of the above rival submissions, we observe that the Commissioner of Income Tax (Appeals) has granted part relief to the assessee with the following observations :-

“3.3.3 I have considered the finding of the A.O. and the written submission of the appellant carefully. The appellant has filed the comparative chart showing G.P./NP and relevant expenses as under :-

S.No.	Particulars	F.Y.	F.Y.	F.Y.	F.Y.
1	Turnover	2005-06	2006-07	2007-08	2008-09
2	G.P.	64.57 (18.67%)	129.52 (19.44%)	203.17 (18.23%)	251.67 (19.26%)
3.	NP.	4.44 (1.28%)	17.51 (2.63%)	53.51 (4.80)	55.92 (4.28%)
4.	Travelling Expenses	11.52 (3.33%)	23.45 (3.52%)	46.7 (4.13%)	58.40 (4.47%)
5.	Commission agents	10.06 (2.91%)	33.76 (5.07%)	34.82 (3.12%)	43.20 (3.31%)

The travelling expenses are increased from 4.13% to 4.47% of total turnover compared to last year. The reason for increase was given by the appellant was increase in transportation cost. Turnover of the appellant was also increased during the year. The appellant has not maintained supporting vouchers for all these expenses. The travelling expenses claimed by the appellant with supporting bills and vouchers were to the extent of Rs.9,72,365/- and remaining travelling expenses were incurred through internal vouchers. The appellant has filed some of such vouchers and affidavit of Shri Kamalkant Patwa in support of her contention. The appellant has maintained

internal vouchers for travelling expenses but they were not supported with 3rd party voucher. The appellant must have incurred the expenses for travelling but in absence of proper bills and vouchers they could not be allowed fully. Further, payments were also made in cash and genuineness of these expenses was not cross verifiable. Considering the above facts, disallowance made by the A.O. out of travelling expenses at Rs.58,40,348/- up to 25% is hereby confirmed i.e. Rs.14,60,087/- and appellant will get relief of Rs., 33,66,941/-

In view of the above, it is apparent from the facts of three consecutive years i.e. F.Ys. 2005-06 to 2007-08 that travelling expenses were increased from 3.5% to 4.15% on total turnover in comparison to immediately preceding F.Y. 2006-07 and the reason or increase was obviously due to increase in the transportation cost which cannot be disbelieved. However, the learned counsel for the assessee could not controvert this finding of the authorities below that the assessee is not maintaining supporting vouchers for all the claim expenses on travelling and only supporting bills and vouchers to the extent of Rs.11,66,350/- were placed on record and

Rs.2,84,310/- were claimed was without any supporting bills and the remaining travelling expenses were incurred only through internal vouchers. However, the Commissioner of Income Tax (Appeals) rightly noted that the assessee has filed some vouchers and affidavits of certain employees on whom major part of travelling expenses was incurred and these vouchers and affidavits have not been controverted by the authorities below. In a peculiar situation when the assessee has claimed higher travelling expenses mainly on the basis of internal vouchers for travelling expenses without any supporting third party bills or any other document then the Commissioner of Income Tax (Appeals) was quite correct and justified in making the disallowance of 25% of total travelling expenses claimed by the assessee. In view of the above, we are unable to see any ambiguity, perversity or other valid reason to interfere with the order of the Commissioner of Income Tax (Appeals) who granted part relief to the assessee and the remaining part was confirmed. Accordingly, ground no. 2 of the revenue's appeal and cross objection of the assessee is dismissed.

CO No. 77/Ind/2013 : A.Y. 2008-09

20. For the reasons mentioned above, ground no. 1 of the cross objection of the assessee for the assessment year 2008-09 is dismissed.

21. For the reasons mentioned above, ground no. 1 of the cross objection of the assessee for the assessment year 2008-09 is dismissed.

ITA No. 410/Ind/2013 : A.Y. 2009-10

22. For the reasons mentioned above, ground no. 1 of the appeal of the revenue is dismissed.

23. For the reasons mentioned above, ground no. 2 of the appeal of the revenue is dismissed.

24. Ground no. 3 for the assessment year 2008-09 and ground nos. 3 for the assessment year 2009-10 relate to the deletion of addition of Rs. 5,45,822/- and Rs. 75,000/- on account of interest on unsecured loan u/s 68 of the Act.

25. Briefly stated, facts pertaining to these grounds are that the assessee claimed interest of Rs. 45,622/- & Rs. 75,000/- on unsecured loan of Rs. 5 lacs claimed to have taken from Smt. Geeta Roy. The Assessing Officer observed that during the assessment year 2008-09 the assessee has shown loan at Rs. 5 lacs from M/s Geeta Rao and has also paid interest of Rs. 45,822/- thereon during F.Y. 2007-08 and thus the Assessing Officer made disallowance at Rs.5,00,000/- on account of unsecured loan from Smt. Geeta Rao and Rs. 45,822/- of adjustment paid thereon by holding that on being asked to produce the creditor by show cause dated 15.11.2010, the assessee did not furnish any reply to the said notice and sought adjustment, thus he failed to produce the creditor showing her existence, creditworthiness and genuineness of the loan transaction. The Assessing Officer in the assessment year 2009-10 also observed that in the assessment year 2008-09 also the Assessing Officer had treated this loan as unexplained cash credit in the books of the assessee and was treated as income of the assessee. The Assessing Officer, therefore, disallowed the entire claim of the assessee and added back the same to the total income of the assessee.

26. Aggrieved, the assessee went in appeal before the Commissioner of Income Tax (Appeals). The learned first appellate authority after considering the issue deleted both the additions. Now the Revenue is in appeal before the Tribunal for both the years.

27. The learned DR drew our attention towards para 3.4.1 of the first appellate order and submitted that the Commissioner of Income Tax (Appeals) granted relief to the assessee ignoring the fact that the assessee did not produce the lender and her credit worthiness and existence was not established by the assessee. The learned DR strenuously pointed out that the Commissioner of Income Tax (Appeals) granted relief to the assessee by considering the irrelevant facts. Therefore, the first appellate order may kindly be set aside by restoring that of the Assessing Officer for both the years.

28. Replying to the above, the learned counsel for the assessee submitted that Smt. Geeta Rao is filing her income tax return regularly and the amounts have been credited by way of cheque/transfer entry to her bank account and confirmation letter was also given by her to the assessee. The learned counsel for the

assessee further submitted that the assessee has filed her affidavit in support of the confirmation of the transaction and this fact cannot be challenged that the amount given to the assessee was credited in the bank account of the assessee from Smt. Geeta Rao by way of cheque/transfer, therefore, the existence and creditworthiness of the creditor/lender cannot be challenged in any manner and, therefore, the Commissioner of Income Tax (Appeals) was right in granting relief to the assessee by following the ratio of the decision of the Hon'ble M.P. High Court in the case of CIT vs. Metachem Industries (supra) and the order of the Tribunal in the case of Sanjay Khatri (supra).

29. In view of the above, we are of the opinion that on being asked by the Bench, the learned DR could not controvert this finding that the lender, Smt. Geeta Rao, is having PAN and regularly filing return with the department. It has also not been controverted by the learned DR that the amounts given to the assessee as loan were credited to the bank account of Smt. Geeta Rao by way of cheque/transfer and thus existence, creditworthiness and genuineness of the transaction cannot be challenged without any

supporting adverse material. Therefore, in our view, the Commissioner of Income Tax (Appeals) was right in granting relief to the assessee and we are unable to see any valid reason to interfere with the same and, hence, we uphold the same.

30. Ground no. 3 of the revenue's appeal for the A.Y.2009-10 relates to deletion of addition of Rs. 75,000/- on account of interest on unsecured loan u/s 68 of the Act.

31. Briefly stated, the assessee claimed interest of Rs. 75,000/- on unsecured loan of Rs. 5 lacs claimed to have taken from Smt. Geeta Roy. The Assessing Officer observed that in the assessment year 2008-09 also the Assessing Officer had treated this loan as unexplained cash credit in the books of the assessee and was treated as income of the assessee. The Assessing Officer, therefore, disallowed the entire claim of the assessee and added back the same to the total income of the assessee. Aggrieved, the assessee went in appeal before the Commissioner of Income Tax (Appeals). The learned first appellate authority after considering the issue deleted the addition. Now the assessee is in appeal before the Tribunal.

32. The learned DR submitted that the Commissioner of Income Tax (Appeals) was not justified in deleting the addition of Rs.75,000/- on account of interest on unsecured loan u/s 68 of the Act without examining the creditworthiness and genuineness of the said transaction. The learned DR submitted that the Assessing Officer has rightly treated the interest as unexplained cash credit in the books of the assessee. He further submitted that the order of the first appellate authority may kindly be set aside and that of the Assessing Officer restored.

33. Replying to the above, the learned counsel for the assessee submitted that for the assessment year 2008-09 the loan taken from Mrs. Geeta Roy has been accepted by the Commissioner of Income Tax (Appeals) after considering the totality of facts and circumstances of the case and he also granted relief to the assessee for the assessment year 2008-09 on justified basis and the same cannot be disturbed without any basis for assessment year 2009-10 for disallowing interest paid on the same loan.

34. We have considered the submissions of both the sides. By the earlier part of this order we have dismissed ground no. 3 of

the revenue for the assessment year 2008-09 pertaining to unsecured loan taken by the assessee from Smt. Geeta Roy and payment of interest has been accepted by the Commissioner of Income Tax (Appeals) and we have already confirmed the findings of the Commissioner of Income Tax (Appeals). Therefore, interest payment in the assessment year 2009-10 cannot be disputed and, therefore, in our opinion, the Commissioner of Income Tax (Appeals) was right in granting relief to the assessee for the assessment year 2009-10 and in view of our findings recorded for the assessment year 2008-09, we uphold the same. Accordingly, ground no. 3 of the revenue is dismissed.

35. In the result, the appeals of the revenue as well as the cross objections of the assessee stand dismissed.

The order has been pronounced in open Court on 25th May, 2017.

Sd/-
लेखा सदस्य
(O.P.Meena)
Accountant Member
May 25th , 2017

sd/-
न्यायिक सदस्य
(C.M. Garg)
Judicial Member

Dn/

DCIT vs. Smt. Namita
ITA Nos.297 & 410/IND/2013