

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-1', NEW DELHI**

Before Sh. N. K. Saini, AM And Smt. Beena Pillai, JM

ITA No. 5873/Del/2015 : Asstt. Year : 2012-13

M/s Swami Hitech Projects Ltd., B-532, Nehru Ground, NIT, Faridabad	Vs	Addl. Commissioner of Income Tax, Range-II, Faridabad
(APPELLANT)		(RESPONDENT)
PAN No. AAICS7754C		

Assessee by : Sh. Abhishek Anand, Adv.

Revenue by : Sh. Subhakant Sahu, Sr. DR

Date of Hearing : 08.03.2016

Date of Pronouncement : 29.03.2016

ORDER

Per N. K. Saini, AM:

This is an appeal by the assessee against the order dated 18.09.2015 of Id. CIT(A), Faridabad.

2. The only grievance of the assessee in this appeal relates to the sustenance of disallowance of Rs.3,01,864/- made by the AO, out of the interest expenditure incurred u/s 36(1)(iii) of the Income Tax Act, 1961 (hereinafter referred to as the Act).

3. Facts of the case in brief are that the assessee filed the return of income on 21.09.2012 declaring a loss of

Rs.1,91,402/- which was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny and the income was assessed on 27.02.2015 at an income of Rs.6,29,050/- by making the following additions:

- “(i) Addition of Rs.3,01,864/- on account of disallowance of interest u/s 36(1)(iii).*
- (ii) Addition of Rs.4,38,978/- on account of disallowance of unverifiable ‘Indirect expenses’.*
- (iii) Addition of Rs.79,606/- on account of disallowance u/s 14A.”*

4. Being aggrieved the assessee carried the matter to the Id. CIT(A) who confirmed the addition of Rs.3,01,864/- by observing as under:

“9. I have carefully perused the assessment order and the submissions of the appellant. A similar issue had come up for adjudication in the case of the appellant for A.Y. 2011-12 which had been allowed by me in favour of the appellant. However, a perusal of facts of the case and the submissions of the appellant shows that the facts of the case in the present appeal are a little different. First of all, the list of parties whom advances have been given is different from the last year. Secondly, during the course of the appellant proceedings for Appeal No. 245/13-14 for the A.Y. 2011-12, the appellant had made detailed submissions along with documentary evidence to establish that only own funds were utilized for making these advances and no borrowed funds were utilized for these purpose. Neither such contention has been made by the appellant this year nor any documentary evidence to this extent has been filed in the written submissions as reproduced above. Thus in view of these

facts, I find no reason to follow my own order for A.Y. 2011-12 and to interfere with the order of the AO. Thus this ground of the appeal is dismissed.”

4. The other additions made by the AO were deleted by the ld. CIT(A).

5. Now the assessee is in appeal against the sustenance of addition of Rs.3,01,864/-. The ld. Counsel for the assessee submitted that the ld. CIT(A) was not justified in confirming the addition made by the AO, particularly when he himself deleted the similar addition in the earlier assessment year i.e. assessment year 2011-12.

6. In his rival submissions the ld. DR supported the order of the authorities below and further submitted that in the Income Tax proceedings *res judicata* is not applicable and even if the ld. CIT(A) had allowed the relief to the assessee in the earlier year, he was not prevented to sustain the addition for the year under consideration, particularly when the assessee had not furnished the documentary evidence.

7. We have considered the submissions of both the parties and perused the material available on the record. In the present case, it appears that the ld. CIT(A) while confirming the action of the AO has passed a non-speaking order,

particularly, he has not pointed out how the submissions made for the year under consideration were not detailed submissions and similar to that of the earlier years wherein the Id. CIT(A) has accepted the contention of the assessee on the identical issue having similar facts. The submissions of the assessee in the present case was that the interest bearing borrowed funds had been utilized for the business purposes only and that there was no finding given by the AO that the borrowed funds were used for non-business purposes. The Id. Counsel for the assessee submitted that the addition made by the AO was not justified and the Id. CIT(A) without appreciating the fact in right prospective passed the impugned order in slipshod manner. In the present case, the Id. CIT(A) in para 9 of the impugned order categorically stated that in assessee's own case for the assessment year 2011-12, the claim of the assessee was allowed. However, in the year under consideration the Id. CIT(A) confirmed the addition made by the AO. In our opinion, the stand of the Id. CIT(A) for the year under consideration is contradictory to the stand taken by him for the assessment year 2011-12. We, therefore, deem it appropriate to set aside this issue back to the file of the Id. CIT(A) to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being

heard to the assessee. We also direct the assessee to Co-operate and not to seek unwarranted or undue adjournment.

8. In the result, appeal of the assessee is allowed for statistical purposes.

(Order Pronounced in the Court on 29/03/2016)

Sd/-

(Beena Pillai)

JUDICIAL MEMBER

Dated: 29/03/2016

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(N. K. Saini)

ACCOUNTANT MEMBER

ASSISTANT REGISTRAR