

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'C' BENCH, CHENNAI

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A.No.1307/Mds/2015

निर्धारण वर्ष /Assessment year : 2009-2010

M/s. Sqny Granites,
No.74, Velayutham Road,
Sivakasi 626 123.

Vs. The Deputy Commissioner of
Income Tax,
Central Circle –III,
Madurai

[PAN ABFFS 5604J]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri. V. Rajasekaran, C.A.

प्रत्यर्थी की ओर से /Respondent by

: Shri. P. Radhakrishnan, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 05.10.2015

घोषणा की तारीख /Date of Pronouncement

: 16.10.2015

आदेश / ORDER

PER G. PAVAN KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-19, Chennai in ITA No.594/14-15, passed u/s.143(3) of the Income Tax Act, 1961 (in short "the Act") for the assessment year 2009-2010.

2. The assessee is a partnership firm and raised only one substantive ground of charging interest on amount advanced to sister concern by the Assessing Officer and subsequently further enhanced by the Commissioner of Income Tax (Appeals).

3. The brief facts of the case are that the assessee is in the business of mining and trading of granite at Sivakasi. There was search operations u/s.132 of the Act on group concern M/s. Sony Firewoks Private Limited on 21.10.2008 and also residential premises of the Directors. Simultaneously, the Income Tax Department conducted survey u/s.133A in the business premises and factories of the group concern and impounded books of accounts, documents, and other incrementing materials. The Id. Assessing Officer has issued notice u/s.153C r.w.s153A (a) dated 30.11.2009 to the assessee firm to file the return of income within specified time.

4. The assessee firm has filed return of income admitting a loss of ₹11,08,565/- on 31.08.2010. In the assessment proceedings, a questionnaire was issued and the Id. AR appeared before the Assessing authorities from time to time and filed details and also gave submissions in respect of seized material and other movable and immovable properties owned by the assessee. The Id. Assessing

Officer examined entries in book of accounts and considered the explanations filed alongwith the evidence and recorded the statements. Further, AO has found on perusal of balance sheet of the assessee an advance of ₹45,25,000/- given to sister concern M/s. Sqny Stones P. Limited on which no interest was charged and calculated interest on such advances at the rate of 6% at ₹2,71,500/- and added to the returned income and assessed the total income as ₹(-) 8,31,065/-. Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), Chennai.

5. The Id. Authorised Representative has argued that as per agreement nil percentage of interest is payable by the sister concern M/s. Sqny Stones (P) Ltd as on 31.03.2009 and relied on the decision of Delhi High Court in the case of *CIT vs Exxon Mobil Lubricants (P) Ltd 236 CTR 498*, wherein it was held that the assessee had entered into an agreement in August, 2002 with retrospective effect from 1st January, 2002 and the liability to make payment there under had arisen and accrued in August, 2002, when the agreement was executed and therefore, the liability of the assessee to pay for period January 2002 to March, 2002 arose and crystallized in August, 2002 and the Hon'ble High Court allowed the claim of the assessee for the

assessment year 2003-2004 and also on the decisions of Supreme Court in the case of *Bharat Earth Movers vs. CIT (2000) 162 CTR 325 and Non Such Tea Estate Ltd vs. CIT (1975) 98 ITR 189*. In the appellate proceedings, the assessee has filed a copy of the agreement and explained that the assessee firm has adequate interest free funds received from other sister concerns and utilized to pay another sister concern and no interest is charged or crystallized in financial year 2008-09. The Id. CIT(A) heard the submissions and perused the various documents including agreement and considered the case in the different prospective to enhance the income of the assessee by further disallowance and held the rate of interest charged by the Assessing Officer @ 6% is on the lower side as no borrowing could be made at such rate of interest and there is no rationality of percentage considered for disallowance. In comparison to interest rate payable @12.5 % to bank for advances and enhanced the percentage of interest from 6% to 12.5% and relied upon the decision of the jurisdictional High Court of Madras and other High Courts and Tribunal made an additional disallowances of interest ₹2,94,125/-. Aggrieved by the impugned order of the Commissioner of Income Tax (Appeals) assessee filed an appeal before the Tribunal.

6. Before the Tribunal, Id. counsel submitted that the firm has adequate liquidity of funds and there are no contingent liabilities payable. The Id. Assessing Officer without considering the terms of agreement on advance has unilaterally estimated the interest rate at 6% on ₹45.25 lakhs advanced to the sister concern M/s.Sqny Stones Private Limited and made disallowance of ₹2,71,500/. Further, the Id. Commissioner of Income Tax (Appeals) exercising powers erred in enhancing the interest rate from 6% to 12.5% which is practically not possible for any business entities to consider interest when there is no actual receipts and made additional interest disallowance of ₹2,94,125/- and total aggregating to ₹5,65,625/-. The Id. Authorised Representative argued that on perusal of balance sheet at page No.3. of paper book, the current liabilities are ₹1.57 crores compared to current assets including advance to sister concern ₹68.77 lakhs. The Id. Authorised Representative also demonstrated before us by referring to agreement at page 21 were no interest is payable on advance and filed written submissions with income tax particulars and ledger accounts copies of the sister concern shown under current liabilities M/s. Chindia Granites (P) Ltd and M/s. AAA Trade Agencies to prove that adequate interest free funds are available. The Id. CIT(A) has overlooked the balances available with the assessee and charged

interest based on the bank rate at 12.5% which is not acceptable. Further, the Id. AR relied on the Tribunal decision of *M/s. S.P. Jaiswal Estates (P) Ltd vs. ACIT, in ITA Nos.488 & 525/Kol/2011, dated 31.05.2012* and *M/s. Kajal Exports vs. ITO in ITA No.496 & 497/Ahm/2010, dated 12.04.2013* and prayed for deletion of additions.

7. On the other hand, the Id. Departmental Representative relied on the orders of the lower authorities and vehemently argued that the assessee has not submitted the information before the Assessing Officer nor in appellate proceedings, hence, the appeal of the assessee be dismissed.

8. After hearing the rival submissions of both the parties, and also perused the material on record and the orders of the lower authorities, the Id. AR has substantiated his claim for deletion of interest with arguments and filed paper book and ledger account copies of sister concerns who has advanced amount to assessee which were utilized for advancing to M/s. Sqny Stones P. Ltd and relied on case laws. It is a fact that material evidence filed was very much crucial for assessment purpose. On perusal of balance sheet the surplus funds are available comparing current liabilities at ₹1.57 crores against the advance shown to sister concern in current assets at

₹68.77 lakhs, and goes to prove the source is bonafide and genuine. The Id. Departmental Representative objected to the submissions. We are of the opinion that the information submitted by the assessee firm is to be verified and examined by the lower authorities. Hence, we set aside the order of the Commissioner of Income Tax (Appeals) and restore the issue back to the Assessing Officer for verification and genuineness of the claim. The Assessing Officer shall provide adequate opportunity of hearing to the assessee and decide the issue afresh.

9. In the result, the appeal of the assessee in ITA No/1307/Mds/2015 is partly allowed for statistical purposes.

Order pronounced on Friday, 16th day of October, 2015, at Chennai.

Sd/-
(चंद्र पूजारी)
(Chandra Poojari)
लेखा सदस्य/Accountant Member

Sd/-
(जी. पवन कुमार)
(G. Pavan Kumar)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai

दिनांक/Dated:16.10.2015

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |