

आयकर अपीलिय अधिकरण ,इन्दौर न्यायपीठ ,इन्दौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
 INDORE BENCH, INDORE**

श्री सी. एम. गर्ग, न्यायिक सदस्य

तथा

श्री ओ.पी.मीना ,लेखा सदस्य के समक्ष

**BEFORE SHRI C.M.GARG, JUDICIAL MEMBER  
 AND  
 SHRI O.P. MEENA, ACCOUNTANT MEMBER**

आ.अ.सं /I.T.A. No.644/Ind/2015		
निर्धारण वर्ष/ <b>Assessment Year:2010-11</b>		
<b>M/s. Narendra Industries, Bahadarpur Road, Burhanpur</b>	<b>vs.</b>	<b>ACIT Khandwa</b>
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent
स्था.ले.सं./PAN: <b>AAAFN7193D</b>		
अपीलार्थी की ओर से/Appellant by	<b>Shri S.N. Agarwal,&amp; Shri Pankaj Mogra CA</b>	
प्रत्यर्थी की ओर से/Respondent by	<b>Shri Mohd. Javed, D.R.</b>	
सुनवाई की तारीख/Date of hearing	<b>22.02.2017</b>	
उद्घोषणा की तारीख/ Date of pronouncement	<b>28.02.2017</b>	

**आदेश /O R D E R**

**PER O.P. MEENA, ACCOUTANT MEMEBR.**

This appeal by the assessee is directed against the order of learned Commissioner of Income tax (Appeals)-II, Indore [in short CIT (A)] dated 30.04.2015 for the Assessment Year 2010-11 on following grounds:

1. *The Ld. CIT (A) has erred in confirming the addition of Rs.11,60,840/- on account of interest payments on the ground that the borrowed funds have been diverted for non business purposes.*
  - 1.1. *It was proved before the lower authorities that the assessee had sufficient capital and interest-free funds. No nexus has been proved; by the Ld. AO, that borrowed funds have been utilized for interest free advances.*
  - 1.2. *The Ld. CIT (A) did not consider the cases cited before him.*
2. *The addition of Rs. 11,60,840/- may please be deleted or in the alternative restricted to reasonable figure.*
3. *The Ld. CIT(A) has erred in maintaining the addition of Rs.86,346/- being the undervaluation of stock. The same may be deleted or in the alternative the AO may be directed to reduce the income in the subsequent year.*

**1. Ground no. 1 and 2 relate to confirmation of disallowance of interest of Rs. 11,60,840/- hence, these are being considered together.**

**1.1.** Succinctly, facts as culled out from the orders of lower authorities are that the assessee derives income from trading of soya oil. F.P., tuar, Mustard and cottonseeds. The assessee has filed return of income on 30.09.2010 declaring total income of Rs.93,73,320/-. The AO found that the assessee has advanced interest bearing funds to some of persons from which either no interest is charged or the same is charged at lesser rate whereas the

assessee has paid interest @ 12% on loan taken. The AO therefore, worked out disallowance of interest as detailed below:

Name of the concern	Period in days	Amount	Interest charged	Disallowance of interest @ 12%
1. Balgavind Ji Agrawal	365	1,00,00,000	Nil	1,20,000
2. Raghunath & co.	5 months	25,00,000	Nil	1,25,000
3. Raghunath & Co.	365 days	76,32,000	Nil	9,15,840
Total interest disallowed				11,60,840/-

**1.1.1.** In view of above, the AO disallowed the interest of Rs. 11,60,840/- by observing that the assessee has diverted interest bearing funds for advancing the same without interest or on lesser side.

**1.2.** Being, aggrieved the assessee filed an appeal before the Id. CIT (A). However, Id. CIT(A) confirmed the action of the AO by observing that the assessee has failed to controvert the finding of the AO. The contention of the assessee that it had sufficient interest-free funds available out of which interest-free funds advances were given was not found acceptable.

**1.3.** Being, aggrieved the assessee filed this appeal before the Tribunal. The Ld. A.R. submitted that the observation of the AO is

not correct on the facts of the case. The Ld. A.R. submitted a table demonstrating that the assessee has substantial interest-free funds of Rs. 34,42,80,122/- (consisting of partners capital of Rs. 11,10,75,722/- and loans & deposit from relatives of Rs. 5,46,41,437/-) as against the interest bearing funds of Rs. 10,74,96,222/-. The Ld. A.R. has filed a table depicting the details of funds utilization of interest-free funds and interest bearing funds, which is supported by the copy of balance sheet appearing at page No 18 to 19 of Paper Book. According to which funds of Rs. 42,87,94,274/- have been utilized for business purpose in fixed assets, loan and advances, sundry debtors, cash and bank balances, etc. From the above facts and data, the Ld. A.R. contended that the assessee has not diverted its interest bearing funds for non-business purposes. Therefore, there was no question of diversion of interest bearing funds by the assessee. Thus, the disallowance as made by the AO is totally wrong. The Ld. A.R. further submitted that above facts of the case shows that advances to above persons as mentioned in assessment order from whom interest was not charged was given out of interest-free funds available with it.

**1.3.1.** The Ld. A.R. relying on the decision of Hon`ble Supreme Court in the case of S.A. Builders vs. CIT (2007) 288 ITR 1(SC) contended that the onus on the revenue to show that interest bearing fund alone were invested in investment on which no income was earned. The Ld. A.R. further relied on the decision of Hon`ble Supreme Court in the case Munjal Sales Corporation vs. CIT (2008) 298 ITR 298 (SC) wherein it was held that where assessee had sufficient profits in the current year then interest free advances can be considered flowing from such profits.

**1.3.2.** The Ld. A.R. also place reliance on the judgement of Hon`ble Bombay High Court in the case of CIT vs. Reliance Utilities & Power Ltd. (2009) 313 ITR 340(Bom) wherein it was held that if there are fund available both interest free and interest bearing, then a presumption would arise that investment were out of interest free funds generated or available with the assessee. If the interest-free funds were sufficient to meet the investment no disallowance of interest paid on borrowed funds would be necessary. Once such presumption is established claim of interest was allowable.

**1.3.3.** The Ld. A.R. also placed reliance on the judgement of Hon`ble Supreme Court in the case of S. A. Builders vs. CIT (2007) (288 ITR 1) (SC) wherein it was held that where the assessee has made investment out of mixed funds for the commercial expediency then no disallowance could be made under section 36 (1) (iii) of the Act.

**1.3.4.** The Ld. A.R. further placed reliance on following judgement in the case of CIT vs. Hero Cycles Ltd. (2010) 323 ITR 518 (P&H) wherein it was held that no disallowance out of interest payment is permissible if AO does not establish nexus between the expenditure incurred and income generated. The Ld. A.R. submitted that in the present case the AO has failed to establish that the assessee had diverted interest bearing funds for non business purposes or advanced the same without interest. When the assessee has utilized the interest bearing funds for business purpose and justified the same , then no disallowance of interest can be made.

**1.3.5.** The Ld. A.R. further cited following judicial pronouncements in support of his contention as follows: Ram Kishan Oil Mills vs. CIT 56 ITR 186 (MP), Birla Gwalior Pvt. Ltd. vs.

CIT 44 ITR 847(MP), D & H Secheron Electrodes Ltd. 142 ITR 529 (MP), Regal Theatre vs. CIT 225 ITR 205(Del), Sarvodya Kela Group vs. ITO 25 ITJ 409(Indore-Trib), and others as per his written submissions.

**1.4.** On the other hand, the Ld. D.R. relying on the orders of lower authorities submitted that the assessee is not able to substantiate that interest free advances were given out of interest-free funds available with the assessee, hence, finding of the AO/Ld. CIT(A) may be upheld.

**1.5.** We have heard the rival submissions of both the parties and have perused the material available on record. We find that the ld. A.O. has failed to establish that interest free advances to above stated parties were out of interest bearing funds. It is the contention of the assessee that it had sufficient non-interest bearing funds to the tune of Rs.34.42 crores as per balance sheet as on 31.03.2010 as against interest bearing funds offered at Rs.10.74 crores. Hence, interest-free funds of Rs. 34.52 crores have been utilised for giving interest-free advances to aforesaid above parties on which no interest was charged. Thus interest-free advance were given out of interest-free funds available with the

assessee during the year for which sufficient interest-free funds were available. Therefore, we are of the view that the Ld. A.O. has failed to establish that interest free advances to above stated four parties were out of interest bearing funds. The Ld. A.R. has, also placed reliance on the judgement of Hon`ble Supreme Court in the case of S. A. Builders vs. CIT (2007) 288 ITR 1(SC) wherein it was held that where the assessee has made investment out of mixed funds for the commercial expediency then no disallowance could be made under section 36 (1) (iii) of the Act. We find that the AO has not been able to establish the nexus between interest bearing funds utilized for non business purpose as held in above quoted decision of Hon`ble Supreme Court. The ld. A. R. has placed reliance in the case of CIT vs. Reliance Utilities & Power Ltd. (2009) 313 ITR 340 (Bom)/ 178 Taxman 135 (Bom) wherein it was held that if there was funds available both, interest-free and overdraft and or/loans taken, then a presumption would arise that investments would be out of the interest-free funds generated or available with the company, if the interest free funds were sufficient to meet the investments. In the present case, the sufficient interest free funds were available at the disposal of the assessee. Therefore,

presumption would go in favour of the assessee that the interest free funds were given out of interest free funds available at the disposal of the assessee as per balance sheet of the assessee. We further rely on the decision of Hon`ble Punjab & Haryana High Court in the case of CIT vs. Hero Cycles Ltd. (2010) 323 ITR 518(P&H) wherein it was held that no disallowance out of interest payment is permissible if AO does not establish nexus between the expenditure incurred and income generated. Therefore, by applying the ratio as laid down by the Hon`ble Bombay High Court in in the case of CIT vs. Reliance Utilities & Power Ltd. (2009) 178 Taxman 135 (Bom) and the decision of CIT vs. Hero Cycles Ltd. (2010) 323 ITR 518 (P&H) and other judgements as cited above, we are of the considered opinion that no disallowance of interest is warranted in this case. In view of these facts and circumstances, the disallowance of interest of Rs. 11,60,840/- made by the AO is deleted. Accordingly ground no. 1 and 2 of appeal is therefore, allowed.

**2.** Ground No.3 was not pressed, therefore, same is dismissed.

**3.** In the result, the appeal of the assessee stands partly allowed.

The order pronounced in the open Court on 28.02.2017.

**Sd/-**

(सी.एम.गर्ग)

न्यायिक सदस्य

**(C. M. GARG)**

**JUDICIAL MEMBER**

**Sd/-**

(ओ.पी.मीना)

लेखा सदस्य

**(O.P.MEENA)**

**ACCOUNTANT MEMBER**

दिनांक /**Dated : 28<sup>th</sup> February, 2017/opm**