

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
AHMEDABAD SMC BENCH, AHMEDABAD**

**[Coram: Pramod Kumar AM]**

I.T.A. No.2482/Ahd/2015  
Assessment Year: 2011-12

**Yamir Packaging Pvt. Ltd.,**  
11, Yes House,  
Shivalik Plaza,  
Opp. AMA, IIM Road,  
Polytechnic,  
Ahmedabad – 380 015.  
[PAN : AAACY 0728 N]

.....**Appellant**

**Vs.**

**Dy. Commissioner of Income Tax,**  
**Circle - 8, Ahmedabad.**

.....**Respondent**

**Appearances by:**

**P.B. Parmar** for the appellant  
**Vimal I. Mehta** for the respondent

Date of concluding the hearing: 14.08.2017  
Date of pronouncing the order: 29.08.2017

**O R D E R**

1. By way of this appeal, the assessee appellant has challenged correctness of the order dated 29.05.2015, passed by the learned CIT(A), Ahmedabad, in the matter of assessment under section 143(3) of the Income Tax Act, 1961 (the Act hereinafter), for the Assessment Year 2011-12.

2. In the first ground of appeal, the assessee has pleaded that the learned CIT(A) has erred in not considering the ground challenging disallowance of interest expenses amounting to Rs.2,63,407/-.

3. Briefly stated, the facts of the case are that the assessee has filed its return of income on 27<sup>th</sup> September, 2011 declaring a total loss of Rs.72,90,599/-. On perusal of the accounts it was revealed to the Assessing Officer that the assessee has made an addition of Rs.1,71,55,018/- to its assets. In its balance sheet, total funds were shown at Rs.38,50,63,704/-. Out of these total funds, interest bearing funds constituted Rs.31,11,33,689/-. According to the Assessing Officer the assessee has claimed huge interest expenditure of Rs.2,86,47,635/-. The Assessing Officer further observed that it is quite difficult to identify utilization of interest bearing funds because the assessee has not submitted fund flow statement. Thus, he observed that 81% of the total funds available with the assessee were interest bearing funds. He further observed that on this analogy investment in the assets could be considered as from the interest bearing funds to the extent of 81%. The Assessing Officer further observed that out of the total addition amounting to Rs.1,71,55,018/- in the assets, a sum of Rs.1,38,95,564/- is to be considered from borrowed funds (representing 81% of the total addition to the assets). The Assessing Officer thereafter observed that the assessee could furnish explanation in respect of the addition of Rs.95,05,450/-. The assessee could not explain the remaining addition to the balance sheet. According to the Assessing Officer, since the assets were put to use under section 36(1)(iii), the interest expenditure to the extent of addition to the asset of Rs.43,90,114/- cannot be allowed to the assessee under section 36(1)(iii) of the Act. In this way the Assessing Officer has capitalized interest expenditure of Rs.2,63,407/-. This amount has been computed by applying interest rate of 12%.

4. Aggrieved by this disallowance, the assessee carried the matter in appeal and it has raised the following grounds:-

- “1. The learned Assessing Officer has erred in disallowing the interest expenses @ 12% on cost of additions to Plant & Machinery is Rs.43,90,114/- without considering the genuineness of transactions.**
- 2. The learned Assessing Officer has erred in not considering our explanation of written off of preliminary expenses of Rs.9,39,887/-.**
- 3. The learned Assessing Officer has erred in addition of account of late payment of Employees contribution to PF amounting to Rs.74,522/-.**
- 4. The learned Assessing Officer has erred in imposing of penalty u/s.271(1)(c) on disallowance u/s. 40(a)(ia) for Rs.1,68,336/- for non deduction of TDS on various payments.”**

5. Learned Counsel for the assessee contended that learned First Appellate Authority has not recorded any finding on this issue. Therefore, this issue deserves to be set aside to the file of Assessing Officer for fresh adjudication.

6. Learned Departmental Representative was unable to controvert this contention of the learned counsel for the assessee.

7. I have heard the rival submissions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. It emerges out that the Assessing Officer has made disallowance of interest expenditure amounting to Rs.1,35,000/-. This was disallowed for user of interest bearing funds towards non-business purposes. Apart from this disallowance, Assessing Officer further disallowed an amount of Rs.2,63,407/- under section 36(1)(iii). Learned first appellate Authority has considered the issue with regard to first fold of grievance i.e. disallowance of interest expenditure of Rs.1,35,000/- but did not consider the second fold. Both these issues are two independent separate issues. Therefore, considering the records, I am of the view that the first appellate authority failed to consider the ground of appeal

raised by the assessee. I, therefore, set aside this issue to the file of learned CIT(A) for adjudication. The assessee will be at liberty to submit any explanation or evidence in support of its explanation.

8. In the next ground of appeal, grievance of the assessee is that the learned CIT(A) has erred in confirming the addition of Rs.74,522/-for late payment of PF. It emerges out from the record that the assessee has failed to make payment of employees contribution towards PF fund within the statutory time limit provided in the PF Act. The Assessing Officer has disallowed the claim of the assessee. On appeal, learned CIT(A) confirmed the disallowance by putting reliance upon the decision of Honble Gujarat High Court in the case of CIT vs. Gujarat State Road Transport Corporation reported in 265 CTR 64 (366 ITR 170). Learned counsel for the assessee submitted that the payment was made within the grace period available under the PF Act. Therefore, it has to be construed as paid within the time limit. The explanation to this effect has been submitted before the learned CIT(A) in the written submission. In support of his contention, learned counsel for the assessee has relied upon the judgement of Honble Gujarat High Court in the case of CIT, Valsad vs. Amoli Organics (P.) Ltd. reported in 221 Taxman 116 (Gujarat).

9. I have heard the rival submissions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. In the written submission filed before the learned CIT(A) the assessee has itself submitted that payment to the PF account was made after two days of the due date. The due date was 15.01.2011 and payment was made on 17.01.2011. The judgment which has been relied by the learned counsel for the assessee propound that if payment was made within the grace period then deduction would be admissible to the assessee but this

judgement was delivered on 11<sup>th</sup> November, 2013. Hon<sup>ble</sup> Gujarat High Court thereafter considered this issue more elaborately in the case of Gujarat State Road Transport Corporation which has been delivered on 26.12.2013. The assessee has failed to bring on record the due date for payment of employees'/employers' contribution towards the PF account including the grace period. If any grace period is admissible then this rules ought to be placed on record. No such effort has been made. Therefore, I am of the opinion that the learned CIT(A) has rightly disallowed the claim of assessee and it cannot draw any benefit from the judgement of Hon<sup>ble</sup> Gujarat High Court rendered in the case of Amoli Organics (P.) Ltd. (supra). This ground of appeal is, therefore, dismissed.

10. In the result, appeal is partly allowed for statistical purposes. Pronounced in the open court today on the 29<sup>th</sup> day of August 2017.

Sd/-

**Pramod Kumar**

(Accountant Member)

***Dated: Ahmedabad, the 29<sup>th</sup> day of August, 2017.***

***PBN/\****

Copies to:                   (1)    *The appellant*                   (2)    *The respondent*  
                                  (3)    *CIT*                                   (4)    *CIT(A)*  
                                  (5)    *DR*                                   (6)    *Guard File*

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Ahmedabad benches, Ahmedabad*