

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", NEW DELHI**

BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER

I.T.A. No.1120 /Del/2017

AY: 2008-09

Pradeep Raj Jindal Jindal Villa, Model Town Hisar PAN-ABIPJ5075F	Vs.	ITO Ward-3 Hisar
[Appellant]		[Respondent]

Assessee by:	Sh. K. Sampat & Sh. V. Rajakumar, Advs
Respondent by:	Sh. T. Vasanthan, Sr. DR

Date of Hearing:	26	09	2017
Date of Pronouncement:	29	09	2017

ORDER

PER R.K. PANDA, A.M:

This appeal filed by the assessee is directed against the order dated 07th December, 2012 passed by the CIT(A), Hisar relating to assessment year 2008-09.

2. There was a delay of 23 days in filing of this appeal. The assessee has filed a condonation petition explaining the reasons of such delay according to which the counsel of the assessee who was looking after the case has passed away. After considering the contents of the condonation petition and after hearing the learned DR the delay in filing of the appeal is condoned.

3. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 30th September, 2008 declaring total income of

Rs. 3,30,283/-. During the course of assessment proceedings, the AO observed that the assessee has claimed interest expenditure of Rs. 11,26,624/-. The AO analyzed the interest free advances given by the assessee to various persons and the interest paid to various persons on loan taken. After considering the reply of the assessee, the AO, following the decision of Hon'ble Punjab & Haryana High Court in the case of Abhishek Industries Limited reported in 286 ITR disallowed an amount of Rs. 4,59,195/-.

4. In appeal, the learned CIT(A) upheld the action of the AO. Aggrieved with such order of learned CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:

That on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the following actions of the Assessing Officer:

1. *in passing order u/s 143(3) of the income-tax Act, 1961 at an income of Rs. 8,96,080/- against the returned income in a sum of Rs. 4,36,880/-:*
2. *in making following additions to the returned income:*
 - a) *Rs. 1,93,242/- on account of disallowance of interest claimed u/s 36(i)(iii) of the Act;*
 - b) *Rs. 2,65,953/- on account of interest claimed as expenditure treating the same as not related to business.*

5. The learned counsel for the assessee, at the outset, submitted that the assessee has borrowed money for its own business purpose and has paid interest on such borrowed capital. The assessee has also given some interest free loans to various related parties. He submitted that the disallowance of interest made by the AO under Section 36 (1)(iii) is not warranted in view of the decision of Hon'ble Supreme Court in the case of CIT VS. S.A. Builders reported in 288 ITR 1. He submitted that the decision relied on by the AO in the case of Abhishek Industries Limited (Supra) has been reversed by the Hon'ble Supreme Court. He accordingly submitted that he has no objection if the matter is set aside to the AO with a direction to decide the issue afresh in the light of the decision of Hon'ble Supreme Court in the case of Munjal Sales

Corporation reported in 298 ITR 298 and Hero Cycles (P.) Ltd. reported in 379 ITR 347.

6. The learned DR, on the other hand heavily relied on the order of the CIT(A). He submitted that the CIT(A) has rightly upheld the disallowance made by the AO. Therefore, the same should be upheld and the grounds raised by the assessee should be dismissed.

7. I have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. Disallowance of interest of Rs. 1,93,242/- under Section 36(1)(vii) and further disallowance of interest of Rs. 2,65,953/- being not related to business is the only issue raised by the assessee in the grounds of appeal. In the light of the arguments advanced by the learned counsel for the assessee and in the light of the decision of Hon'ble Supreme Court in the case of S.A. Builders (Supra), Munjal Sales Corporation (Supra) and Hero Cycles (P.) Ltd. (Supra), I deem it proper to restore the issue to the file of AO with a direction to re-adjudicate the issue after giving due opportunity of being heard to the assessee. I hold and direct accordingly. The grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 29.09.2017.

Sd/-
[R.K. PANDA]
Accountant Member

DATED: 29.09.2017

SH

Copy forwarded to:-

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

Assistant Registrar

Sl. No.	Particulars	Date
1.	Date of dictation	
2.	Date on which the draft is placed before the Dictating Member	
3.	Draft placed before the other Member	
4.	Approved draft comes to the Sr. PS/PS	
5.	Kept for pronouncement on	
6.	Final order received after pronouncement	
7.	File sent to the Bench Clerk	
8.	Date on which files goes to the Head Clerk	
9.	Date on which file goes to the Assistant Registrar	
10.	Date of dispatch of order	