

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK  
'SMC' BENCH, CUTTACK**

**BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER**

**ITA No.99/CTK/2017**  
Assessment Year : 2011-12

Amitabh Kar, Sri International Finance Lgd., Plot No.206/605, Gajapati Nagar, Bhubaneswar	Vs.	JCIT, Range-2, Bhubaneswar.
PAN/GIR No. AGIPK 0435 B		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri P.R.Mohanty, AR  
Revenue by : Shri D.K.Pradhan, DR

**Date of Hearing : 01 /08/ 2017**  
**Date of Pronouncement : /08/ 2017**

**ORDER**

This is an appeal filed by the assessee against the order of CIT(A)-2, Bhubaneswar, dated 21.12.2016 for the assessment year 2011-12.

2. Ground Nos.1 & 3 are general in nature and, hence requires no separate adjudication by me.

3. In Ground No.2(1) of the appeal, the grievance of the assessee is that the CIT(A) erred in confirming the addition of Rs.4,50,000/- made u/s.68 of the Act.

4. The brief facts of the case are that the Assessing Officer observed that the assessee has introduced capital of Rs. 12,00,000/- in the capital

account in the books of Kedarnath Fuels, Konark. Before the Assessing Officer, the assessee submitted that the capital introduction of Rs. 7,50,000/- was from Kedarnath Fuel, Sakhigopal to Kedarnath Fuel, Konark. The assessee submitted the date-wise transactions of funds. However, for the balance capital introduction of Rs. 4,50,000/-, the assessee could not furnish the evidence to establish the source and, therefore, the Assessing Officer made the addition of Rs.4,50,000/- as unexplained cash credit u/s.68 of the Act

5. On appeal, the CIT(A) confirmed the action of the Assessing Officer observing that neither during the assessment proceedings nor during the appeal proceedings, the assessee was able to furnish any evidence regarding capital introduction of Rs. 4,50,000/- in Kedarnath Fuels, Konark .

6. Before me, Id A.R. of the assessee filed audited accounts of Amitabh Kar u/s.44AB of the Act and argued that it will be observed from the balance sheet of M/s. Kedarnath Fuels, Sakhigopal as on 31.3.2011 that Rs.7,50,000/- was transferred to Kedarnath Fuels, Konark during the financial year 2010-2011. Further, he pointed out from the balance sheet of M/s. Kar Transport, Bhubaneswar as at 31.3.2011 that the assessee has drawings of Rs.4,50,000/- during the financial year 2010-2011 and submitted that this was the source of capital introduced in Kedarnath Fuels, Konark. Thus, he submitted that this is how Rs.12 lakhs was the capital introduced by the assessee in his proprietary business Kedarnath

Fuels, Konark. He submitted that the assessee was the proprietor of all the three business concerns namely Kedarnath Fuels, Konark, Kedarnth Fuels, Sakhigopal and Kar Transport, Bhubaneswar. Hence, it was his submission that addition made of Rs.4,50,000/- should be deleted.

7. On the other hand, Id D.R. supported the orders of lower authorities.

8. I have heard the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, the undisputed facts are that the Assessing Officer found that the assessee has introduced Rs.12,00,000/- as capital in its business in M/s. Kedarnath Fuel, Konark. When required to explain the source of the same, the assessee filed details of Rs.7,50,000/-, which was the amount withdrawn from proprietary business of the assessee M/s. Kedarnath Fuel, Sakhigopal and the same was introduced as capital in the business of M/s. Kedarnath Fuel, Konark. In absence of explanation for the balance amount of Rs.4,50,000/-, the Assessing Officer made addition of the same as unexplained cash credit u/s.68 of the Act.

9. On appeal, the CIT(A) confirmed the action of the Assessing Officer.

10. Before me, Id A.R. has filed copy of audit report u/s.44AB of the Act of the assessee wherein, balance sheet and profit & loss account of three business concern of the assessee namely, Kedarnath Fuel, Sakhigopal, Kedarnath Fuel, Konark and Kar Transport, Bhubaneswar are attached.

From the balance of Kar Transport, Bhubaneswar as on 31.3.2011, he has pointed out that Rs.4,50,000/- was withdrawn and introduced as capital in the business of M/s. Kedarnath Fuel, Konark. Thus, the source of introduction of capital in Kedarnath Fuel, Konark of Rs.4,50,000/- was explained and it was his prayer to delete the addition of Rs.4,50,000/- u/s.68 of the Act. He has also submitted that said audited statement of accounts were filed by the assessee with the return of income and were available with the Assessing Officer at the time of assessment.

11. Ld D.R. argued that these papers were not submitted before the Assessing Officer and, therefore, the matter should be restored back to the file of the Assessing Officer for re-examination.

12. I am of the considered view that the audited statement of accounts were filed by the assessee alongwith the return of income and, therefore, they were available with the Assessing Officer. The assessee has not filed any new documents before me. From the audited statement of accounts, he has shown that Rs.4,50,000/- was withdrawn from the proprietary business of Kar Transport, Bhubaneswar, which was deposited as capital in his another proprietary business M/s. kedarnath Fuel, Konark. Thus, the source of Rs.4,50,000/- was satisfactorily explained by the assessee and hence, addition made u/s.68 of the Act of Rs.,4,50,000/- is not called for. Hence, I set aside the orders of lower authorities and delete the addition of Rs.4,50,000/- made under section 68 of the Act and allow this part of ground of appeal of the assessee.

13. In Ground No.2(2) of the appeal, the grievance is that the CIT(A) was not justified in confirming the disallowance of Rs.1,32,978/- u/s.40(a)(ia) of the Act.

13.1 The brief facts of the case are that the Assessing Officer observed that in the profit and loss account of M/s. Kar Transport, the assessee has debited interest of Rs.1,32,978/-, which was paid to Tata Finance Limited, a non-banking financial company. As per the provisions of section 194A, the assessee has to deduct TDS on the payment of interest to NBFC. He observed that the assessee has not deducted TDS as per provisions of section 194A and, therefore, by invoking the provisions of section 40(a)(ia) of the Act, he disallowed deduction of Rs.1,32,978/-.

13.2 On appeal, the CIT(A) confirmed the action of the Assessing Officer.

13.3 Before me, Id A.R. has filed order dated 7.6.2017 of Bangalore Benches of the Tribunal in the case of Shri Azmath ulla vs ACIT in ITA No.144/Bag/2017 for A.Y. 2013-14, wherein, the Tribunal held that if the recipients of interest in question have already considered the same for computing their income offered to tax then the disallowance u/s.40(a)(ia) is not attracted. Hence, it was the submission of Id A.R. that in assessee's case, the payment of interest was made to Tata Finance Limited, a non-banking financial company, who has considered the same in the return of income filed and paid due tax thereon. Therefore, in view of the decision of Bangalore Benches of the Tribunal in the case of Shri

Azmath ulla (supra) no disallowance of interest expenditure was called for.

13.4 Ld D.R. relied on the orders of lower authorities.

13.5 I have considered the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, the assessee has paid interest of Rs.1,32,978/- to Tata Finance Limited, a non-banking financial company, on which tax at source was not deducted u/s.194A of the Act. Therefore, the Assessing Officer disallowed deduction u/s.40(a)(ia) of the Act to the assessee, which was confirmed in appeal by the CIT(A). The contention of Id A.R. of the assessee is that the recipient of the interest namely, Tata Finance Limited has considered this amount in their return of income filed and paid tax thereon, therefore, no disallowance of interest is called for. In these circumstances, I am of the considered view that the Assessing Officer has to verify whether Tata Finance Limited has shown Rs.1,32,978/- being interest paid by the assessee in the return of income and paid tax thereon or not. If the Assessing Officer finds that Tata Finance Limited has shown Rs.1,32,978/- in their income in the return of income filed for the assessment year 2011-12, no disallowance of expenditure can be made in the hands of the assessee. I, therefore, set aside the orders of lower authorities on this issue and restore the matter back to the file of the Assessing Officer for adjudication afresh in the light of the discussion

made hereinabove after allowing reasonable opportunity of hearing to the assessee. This part of ground of appeal is allowed for statistical purposes.

14. The other grievance of the assessee in Ground No.2 of the appeal, is that the CIT(A) was not justified in confirming the adhoc disallowance of expenditure made by the Assessing officer under the following heads:

"2(3) -disallowance of road tax expenses	:	Rs.14,743/-
2(4) – disallowance of repair & maint. Expenses	:	Rs.39,585/-
2(5) -disallowance of fuel & lubricant expenses	:	Rs.1,38,157/-
2(6) disallowance of sales promotion expenses	:	Rs.45,700/-
2(7) disallowance of sales promotion expenses	:	Rs.33,753/-
2(8) disallowance of staff welfare expenses	:	Rs.20,550/-
2(9) disallowance of travelling expenses	:	Rs. 7,200/-

15. In regard to Ground No.2(3) of the appeal, the brief facts of the case are that the Assessing Officer made disallowance of Rs.14,743/- under the head "road tax expenses" on the ground that the assessee was not able to product documentary evidence in respect of excess claim of road tax expenses of Rs.14,743/-.

15.1 On appeal, the CIT(A) confirmed the action of the Assessing Officer.

15.2 Before us, Id A.R. could not produce any evidence in regard to excess claim of road tax of Rs.14,743/-. Therefore, the disallowance made by the Assessing Officer and confirmed by the CIT(A) is confirmed and this part of the ground of appeal is dismissed.

16. In regard to Ground No.2(4) of the appeal, the brief facts are that the Assessing Officer made disallowance of Rs.39,585/- under the head "repairs and maintenance expenses" on the ground that the vouchers produced by the assessee are self-made and not verifiable due to which the genuineness of the expenses is not proved. Therefore, he made estimated disallowance of 15% out of total claim of Rs.2,63,900/-, which was confirmed in appeal by the CIT(A).

16.1 Similarly, in regard to Ground No.2(5), the brief facts of the case are that the Assessing Officer made disallowance under the head "fuel and lubricant expenses" under the ground that the vouchers are self-made and not verifiable due to which the genuineness of the expenses is not proved. Therefore, he made estimated disallowance of 10% out of total claim of Rs.13,81,570/-, which was confirmed by the CIT(A) in appeal.

17. Similarly, in regard to ground No.2(7), the brief facts are that the Assessing Officer made disallowance of Rs.33,753/- under the head "sales promotion expenses" under the ground that the vouchers are self-made and not verifiable due to which the genuineness of the expenses is not proved. Therefore, he made estimated disallowance of 15% out of total claim of Rs.2,25,000/-/-, which was confirmed by the CIT(A) in appeal.

18. In Regard to Ground No.2(8), the brief facts of the case are that the Assessing Officer made disallowance of Rs.20,550/- under the head "staff welfare expenses" under the ground that the vouchers are self-made and not verifiable due to which the genuineness of the expenses is not proved. Therefore, he made estimated disallowance of 10% out of total claim of Rs.2,05,500/-, which was confirmed by the CIT(A) in appeal.

19. In Regard to Ground No.2(9), the brief facts of the case are that the Assessing Officer made disallowance of Rs.7200/- under the head "travelling expenses" under the ground that the vouchers are self-made and not verifiable due to which the genuineness of the expenses is not proved. Therefore, he made estimated disallowance of 10% out of total claim of Rs.72,00/-, which was confirmed by the CIT(A) in appeal.

20. As far as Ground No.2(4), 2(5), 2(7), 2(8) & 2(9) are concerned, Id A.R. of the assessee submitted that the adhoc disallowance made by the Assessing Officer out of genuine business expenditure of the assessee was not sustainable in law as he has not pointed out which specific vouchers were not produced by the assessee before him and which vouchers are not verifiable.

21. Ld D.R. relied on the orders of lower authorities.

22. In the above backdrop of the case, I am of the considered view that the Assessing officer has not pointed out for which specific expenditure claimed by the assessee, the vouchers were not produced before him for verification. In the absence of the same, the adhoc disallowance made in a summary manner cannot be sustained in law. Therefore, I set aside the orders of lower authorities and delete the disallowance made by the Assessing Officer and confirmed by the CIT(A) of Rs.29,585/- out of repairs & maintenance expenses, Rs.1,38,157/- out of fuel & lubricant expenses, Rs.33,753/- out of sales promotion expenses, Rs.20,550/- out of staff welfare expenses and Rs.7,200/- out of travelling expenses and allow the above grounds of appeal of the assessee.

23. In regard to Ground No.2(6) of the appeal, the brief facts are that the Assessing Officer made disallowance of Rs.45,700/- on account of sales promotion expenses on the ground of nexus between the gift articles and business of the assessee, which was confirmed in appeal by the CIT(A).

24. Before me also, Id A.R. could not substantiate by submitting any positive material to prove the nexus between the gift articles with the business of the assessee. Therefore, I do not find any infirmity to interfere with the order of the CIT(A), which is hereby confirmed and this part of ground of appeal of the assessee is dismissed.

25. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 10 /08/2017.

Sd/-

(N.S Saini)  
**ACCOUNTANT MEMBER**

Cuttack; Dated 10/08/2017

B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The appellant : Amitabh Kar, Sri International Finance Lgd., Plot No.206/605, Gajapati Nagar, Bhubaneswar
2. The Respondent. JCIT, Range-2, Bhubaneswar
3. The CIT(A) -2, Bhubaneswar
4. Pr.CIT-2, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY  
**ITAT, Cuttack**