



**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No. 195/Rpr/2011

Assessment Year : 2008-09

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| Income Tax Officer-1, Rajnandgaon, C.G. | Vs. | M/s. Radius Water Ltd., Verdhaman Nagar, Rajnandgaon, .C.G. |
| PAN/GIR No.AABCR 5617 G | | |
| (Appellant) | .. | (Respondent) |

Assessee by : Shri P.C.Maloo/Abhisek Maloo Jain, AR
Revenue by : Shri D.K.Jain, DR

Date of Hearing : 08/01/ 2018
Date of Pronouncement : 10/01/ 2018

ORDER

Per Pavan Kumar Gadale, JM

This is an appeal filed by the revenue against the order of the CIT(A)-
Raipur, dated 14.7.2011 for the assessment year 2008-09.

2. Ground No.1 of appeal reads as under:

"Whether in law and on facts and circumstances of the case, the
CIT(A) was right in deleting the addition of Rs.6,00,000/- made
by the AO by treating agricultural income as other income as the
assessee failed to substantiate the same properly."

3. Brief facts of the case are that the assessee company is engaged in
the business of water supply to industries situated in Boral Industrial Growth



Centre under BOOT agreement. The assessee has filed its return of income declaring total income of Rs.6,48,400/- and agricultural income of Rs.6,00,000/-. During the course of assessment proceedings, the Assessing Officer observed that the assessee has claimed a receipt of rent of Rs.6,00,000/-[from letting out the plot to its holding company, M/s. Radius Corporation Ltd. The lesser company has carried plantation works and the income derived therefrom was claimed exempt as agricultural income. The Assessing Officer was of the view that since the assessee does not fulfill the conditions for terming the income as agricultural income, therefore, he treated the income of Rs.6,00,000/- as "income from other sources" and added the same to the total income of the assessee.

4. On appeal, the CIT(A) deleted the addition made by the Assessing Officer.

5. Being aggrieved, the revenue is in appeal before us.

6. Before us, Id D.R. submitted that the assessee has given the land to its sister concern and received rent of Rs.6,00,000/-, which cannot be termed as agricultural income as claimed by the assessee.

7. Ld A.,R. of the assessee supported the order of the CIT(A) and submitted that the income of the sister concern i.e. M/s. Radius Corporation



Ltd., is assessed as agricultural income by the same Assessing Officer, as in the case of the present assessee and the CIT(A) has given clear cut finding in the impugned order by treating the income as "agricultural income"

8. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. We find that the CIT(A) in para 4.3 of his order has given a clear cut finding that the income of Rs.6,00,000/- derived by the assessee from its sister concern is "agricultural income", by observing as under;

"I have gone through the order of the A.O. and the submission made by the appellant. The appellant has derived rent of Rs.6,00,000/- from letting out of plot to its holding company and claimed it as agriculture income to which the A.O. had treated as "other income". The A.O. had not stated the conditions which had not been fulfilled by the appellant to claim the income as agriculture income. Agricultural income has been defined by section 2(1A) which means any rent or revenue derived from land which is situated in India and is used for agricultural purposes is agricultural income. In the present case, the appellant has leased out about 40 acres of land on lease rent of Rs.6,00,000/- per annum. The land was used by the lessee company for agricultural purposes and the income derived from such land was assessed as agricultural income by the same A.O. by assessment order of even date. Thus, the conditions prescribed by section 2(1A) that there should be rent or revenue derived from land and the land should be used for agricultural purposes have been fully complied with. The A.O. has not mentioned any reason for holding that the appellant company has not complied any of the conditions prescribed by section 2(1A). The case law relied upon by the A.O. is not applicable on



the facts of present case. In that case, i.e., Papaya farms (p) ltd. vs DCIT (2010) 46 DTR 367(Mad) agricultural operations on land were not established. The case law relied upon by the appellant support the view advanced by the appellant. In case of COMMISSIONER -OF INCOME TAX vs. HAROOCHARAI TEA COMPANY 1977 CTR (GAU) 229 : (1978) 111 ITR 495 (GAU), it was held that assessee engaged in growing and manufacturing of tea. Lease given to a firm for 10 years for managing the tea estate. Lease rent received also comes within the definition of agricultural income which is excluded in computing total income under s,10(1)- Such income derived in part from agriculture and part from business within the meaning of r.w release rent assessable at the rate of 40 per cent. In view of above fact, I am of the considered opinion that the appellant had duly complied with the condition laid down by section 2(1A) i.e. the appellant had received a rent or any revenue from land and the land has been used for agricultural purposes. Considering the facts of the case, the addition made by the AO cannot be sustained since there is no positive material to hold that the lease rent received by the appellant is not an agricultural income. Therefore, the addition made by the AO is deleted. "

9. Ld D.R. could not controvert the above findings of the CIT(A). Since the income of the sister concern is assessed as agricultural income by the same Assessing Officer, a contrary view cannot be taken by the same Assessing Officer to the said income, which has earned in the case of the assessee. Therefore, we confirm the order of the CIT(A) on this issue and reject the ground of appeal of the revenue.

10. Ground No.2 of appeal reads as under:



“ Whether in laws and on facts & circumstances of the case, the CIT(A) was right in deleting disallowance of Rs.27,56,474/- made by the AO on account of excess interest paid than it had charged from its holding company.”

11. The Assessing officer observed that the assessee company has charged interest @ 9% to Radius Corporation Ltd., for belated payment where as assessee has made interest payment to its bank @ 12.5%. In view of above backdrop, the Assessing officer disallowed the excess payment of interest of 3.5% to its bank than the interest received from its sister concerned.

12. On appeal, the CIT(A) deleted the addition made by the Assessing Officer on the ground that the Assessing Officer has not made out a case that the loan has been obtained for non-business purposes.

13. Ld D.R. supported the order of the Assessing officer and submitted that the assessee has made excess payment of interest to the bank than the interest received from its sister concerned and, therefore, the CIT(A) has erred in deleting the addition without considering the facts that the assessee company and the sister concern are having separate percentage of shareholding, which the Assessing Officer has considered in his order.

14. Ld D.R. submitted that though the assessee and M/s. Radius Corporation Ltd., are sister concern but their business activities and interest



component is part of commercial aspects and also relied on the findings of the CIT(A).

15. After considering the rival submissions and perusing the orders of lower authorities, we find that the CIT(A) has deleted the addition by observing as under:

“I have gone through the order of the A.O. and the submission made by the appellant. Perusal of assessment order reveals that interest has been disallowed for the reason that the appellant has paid interest to banks @12.5% p.a.; whereas he has charged interest to sister concern @9% p.a.. The appellant has contended that the A.O. had over looked the fact that transaction is for consideration of profit and not for accommodation of funds without consideration. There is prima-facie nexus between the borrowing and the business purpose. The A.O. has not proved that the loan has been obtained for non business purposes. The contention of the appellant is accepted. Interest is allowable u/s 36(l)(iii), if the borrowing is for the purpose of business. The A.O. has not looked into the nature of transaction, whether it is a loan or advance or a trading transaction. This is a case of trading transactions between two companies and not advancement of any loan. It is undisputed fact that the trading transaction cannot be treated as for non business purposes and, therefore, even if the appellant has not charged any interest on trade debtors, no interest payment can be disallowed. In present case, the appellant himself has charged interest on trade debt @9% p.a. Thus, the appellant has earned profit on trading transaction as well as earned interest for delayed payment. In view of this fact, it cannot be said that the payment of interest sought to be disallowed is for non business purposes. In case of CIT vs. Indo Kopp Ltd. (2008) 167 Taxman 172 (Del.), it has been held that consideration for paying interest



to trade creditors and for not charging interest from the trade debtors can be different and, therefore, just because the assessee has not charged interest from its trade debtors, interest paid by it to its trade creditors could not be disallowed as a deduction especially when there is no dispute about the genuineness of the payment. In case of City Motor Service Ltd. vs. CIT (1966) 61 ITR 426 (MAD.), it has been held that when the loan is advanced in the course of business merely because interest of such advantages made to debtors have been waived subsequently, interest paid by the assessee on borrowed money cannot be disallowed as long as borrowal is for the purpose of business. In view of above facts and the legal position, I am of the considered opinion that the A.O. has not established the utilization of funds for non business purposes and, therefore, disallowance of interest amounting to Rs.27,56,474/- cannot be sustained and same is hereby deleted.'

16. Ld D.,R. could not controvert the above findings of the Id CIT(A) or show any justified reason to take any contrary view in the matter. Hence, we confirm the findings of the CIT(A) and also dismiss the ground of appeal of the revenue.

17. In the result, appeal filed by the revenue is dismissed.

Order pronounced on 10/01/2018.

Sd/-

(N.S Saini)
ACCOUNTANT MEMBER

sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

Raipur; Dated 10 /01/2018
B.K.Parida, SPS



Copy of the Order forwarded to :

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| 1. | The Appellant : Income Tax Officer-1, Rajnandgaon, C.G |
| 2. | M/s. Radius Water Ltd., Verdhaman Nagar, Rajnandgaon, .C.G. |
| 3. | The CIT(A)- Raipur |
| 4. | Pr.CIT- Raipur |
| 5. | DR, ITAT, Raipur |
| 6. | Guard file. //True Copy// |

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Raipur