

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH 'A', CHANDIGARH**

BEFORE MS.DIVA SINGH, JUDICIAL MEMBER
AND MS.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.1554/Chd/2017
(Assessment Year : 2013-14)

M/s Koeing Solutions Ltd.,
Plot No.22, Industrial Area,
Phase-II, Chandigarh.

Vs.

The D.C.I.T.,
Circle 1(I),
Chandigarh.

PAN: AABCK9007D
(Appellant)

(Respondent)

Appellant by : Shri Tej Mohan Singh, Adv.
Respondent by : Smt.Chanderkanta, Addl.CIT

Date of hearing : 04.04.2018

Date of Pronouncement : 04.05.2018

ORDER

PER ANNAPURNA GUPTA, A.M.:

This appeal has been preferred by the assessee against the order of Ld. Commissioner of Income Tax (Appeals)-1, Chandigarh (hereinafter referred to as ('Ld.CIT(Appeals)') dated 29.9.2017 confirming the levy of penalty u/s 271(1)(c) of the Income Tax Act, 1961 (in short 'the Act') on the disallowance of interest made u/s 36(1)(iii) of the Act.

2. The assessee has raised the following ground before us:

- "1) *That Learned Commissioner of Income Tax (Appeals)-1, Chandigarh has failed to appreciate the facts and circumstances of the case and has thereby erred in sustaining penalty u/s 271(l)(c) of Income Tax Act, 1961 on the ground of disallowance u/s 36(l)(iii) of Income Tax Act, 1961.*

The order under appeal is erroneous as disallowance u/s 36(l)(iii) does not tantamount to furnishing of inaccurate particulars of income.

In view of the above it is prayed that order of Learned Commissioner of Income Tax (Appeals)-I may kindly be quashed.”

3. During the course of hearing before us, the Ld. counsel for assessee stated that penalty in the present case had been levied on account of disallowance of interest expenses made u/s 36(1)(iii) of the Act. Ld.Counsel took us through the assessment order passed u/s 143(3) of the Act in the present case and drew our attention to para 4 of the order wherein the disallowance of interest u/s 36(1)(iii) of the Act was discussed and made by the Assessing Officer amounting to Rs.4,54,507/-. Referring to para 4 of the assessment order, the Ld. counsel for assessee pointed out that the Assessing Officer during assessment proceedings had noted that the assessee had made loans and advances amounting to Rs.37,87,561/-, the business expediency of which could not be explained by the assessee. The Assessing Officer further found that the assessee was incurring expenditure on interest payment of secured and unsecured loans. Therefore, applying the ratio laid down by the Hon'ble Jurisdictional High Court in the case of CIT Vs. Abhishek Industries Ltd., 286 ITR 1, the Assessing Officer held that since the business expediency for making the aforesaid loans and advances had not been established, it was clear that the assessee had diverted interest bearing funds for non-business purpose. He, therefore, proceeded to disallow proportionate interest of Rs.4,54,507/- on the said advances calculated @ 12% of the advances so made. The Ld. counsel for assessee thereafter stated that the

Assessing Officer initiated penalty proceedings on the same as per the provisions of section 271(1)(c) of the Act and thereafter levied penalty vide order dated 24.2.2016 which was in turn confirmed by the Ld.CIT(Appeals) stating that it was a fit case for levy of penalty since the assessee had not brought anything on record as to what interest free sources were available with it for making interest free advances, nor was any explanation given of any business purpose for the advances made. The relevant findings of the Ld.CIT(Appeals) at para 4 of his order are as under:

“4. As regards penalty levied on disallowance made u/s 36(1)(iii) of the Act, it is noticed that the appellant has neither brought on record what interest free resources were available with it for making interest free advance, nor the appellant has explained any business purpose of the advance made. Since the appellant has failed to substantiate its claim, penalty levied on this account is confirmed.”

4. The Ld. counsel for assessee, after detailing the facts of the case, proceeded to make arguments against the action of the Ld.CIT(Appeals) in upholding the levy of penalty on the aforesaid disallowance made of interest u/s 36(1)(iii) of the Act, stating that the basis for the disallowance made was the decision of the Hon'ble Jurisdictional High Court in the case of Abhishek Industries Ltd. (supra), laying down the proposition that where mixed funds are available it cannot be presumed that interest free advances have been made from interest free funds and the onus is on the assessee to establish user of interest bearing funds for business purposes for claiming deduction of interest paid on account of the same, failing

which interest expenses are liable to be disallowed to the extent borrowed funds are used for non business purpose . Ld.Counsel for the assessee stated that subsequently the jurisdictional High Court in a number of decisions held that where mixed funds are available, it is to be presumed that interest free advances have been made out of interest free funds warranting no disallowance of interest u/s 36(1)(iii) of the Act. Ld.Counsel for the assessee drew our attention to the decision of the Hon'ble jurisdictional high court in the case of Bright Enterprises Pvt. Ltd. vs CIT, Jaladhar (2016) 381 ITR 107 & CIT vs Kapsons Associates 381 ITR 204. The Ld. counsel for assessee, therefore, stated that since all particulars relevant to the expenses had been furnished and disallowance had been made relying upon a decision of the Jurisdictional High Court which had subsequently been diluted, it could not be said that the assessee had either furnished inaccurate particulars of income or concealed particulars of his income. The Ld. counsel for assessee pointed out that the issue in any case was debatable and, therefore, the assessee could not be charged with either furnishing of inaccurate particulars or concealing particulars of income. Ld.Counsel for the assessee further relied on the following case laws in support of his contention that no penalty was leviable on account of disallowance of interest made by applying the provisions of section 36(1)(iii) of the Act.

- 1) CIT Vs. Trident Infotech Corpn. Ltd.
34 Taxman.com 132 (P&H)

- 2) Pr. CIT Vs. Rana Sugar Ltd.
81 Taxman.com 77 (P&H)
- 3) Pr. CIT Vs. Torque Pharmaceuticals (P) Ltd.
82 Taxman.Com 47 (Chandigarh-Trib)

5. The Ld. DR, on the other hand, relied upon the order of the Ld.CIT(Appeals).

6. We have heard the rival contentions. We have also gone through the orders of the authorities below leading to and confirming the levy of penalty in the present case. In the present case penalty has been levied on account of disallowance made on interest u/s 36(1)(iii) of the Act. It is not disputed that the particulars relating to interest were all fully disclosed by the assessee in its Balance Sheet and the assessee had claimed the entire interest as business expenditure. It is also not disputed that the assessee had made interest free advances and had failed to establish commercial expediency of the same. The impugned disallowance, we find, has been made following the decision of the Hon'ble Jurisdiction High Court in the case of Abhishek Industries Ltd. (supra), as per which, where the assessee had borrowed interest bearing funds and at the same time made interest free advances without any business purpose, the interest to the extent of interest free advances made had to be disallowed since the interest bearing borrowings made to the extent of interest free advances was held to be not for the purpose of business but for supplementing the cash diverted without deriving any benefit out of it. This proposition laid down by the Hon'ble

Jurisdictional High Court we find, has been reversed in its subsequent judgments in *Bright Enterprises Pvt. Ltd vs CIT, Jalandhar* (2016) 381 ITR 107 & *Kapsons Associates* (supra) wherein it has been held that where mixed funds, both interest bearing and interest free, were available with the assessee and the interest free funds are sufficient to make the interest free advances made by the assessee, the presumption is that the said advances had been made out of interest free funds and consequently no disallowance of interest u/s 36(1)(iii) of the Act was warranted.

7. In such circumstances, where all details of expense have been duly disclosed and the disallowance of expense is based on proposition of law laid down by the Hon'ble High Court, which subsequently is reversed, the assessee cannot be charged with having concealed or furnished any inaccurate particulars of income so as to levy penalty on account of the same u/s 271(1)(c) of the Act.

8. Further in any case addition in the present case was made on the basis of decision of Hon'ble High Court which has only interpreted the scope of the section. The assessee having otherwise furnished all details of the said expenses, it cannot be said to have concealed particulars of its income to the extent of disallowance made based on the interpretation of the scope of the section by the Hon'ble High Court. The Hon'ble Punjab & Haryana High Court has held so in the case of *CIT vs Trident Infotech Corpn. Ltd* (supra) wherein penalty levied on identical disallowance of

interest u/s 36(1)(iii) following decision of the High Court in the case of Abhishek Industries (supra) was held to be not as per law. The Hon'ble High Court while upholding the deletion of penalty by the ITAT held at para 3 of its order as under:

“3. *In the present case, the assessee has furnished its return prior to the judgment of this Court in Abhishek Industries Ltd. case (supra). In view of the principles of law laid down in the aforesaid judgment, the Assessing Officer made addition to the extent of Rs.45,14,3737-. The learned Tribunal has set aside the penalty on the aforesaid addition inter alia for the reasons that such additions were made on account of judgment of this Court in Abhishek Industries Ltd. case (supra) and it does not establish that the assessee has either concealed its income or furnished inaccurate particulars of income. The scope of the provisions of the Act came to be interpreted by this court in the aforesaid judgment. Therefore, the claim of the Assessee cannot be said to be concealment of income, which may attract penalty.*”

9. In view of the above therefore, we direct the deletion of penalty levied on disallowance of interest made u/s 36(1)(iii) of the Act. The ground of appeal raised by the assessee is allowed.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court.

Sd/-

Sd/-

(DIVA SINGH)
JUDICIAL MEMBER

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Dated : 4th May, 2018

Rati

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A)
4. The CIT
5. The DR

Assistant Registrar,
ITAT, Chandigarh

