

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

**Before: Shri Rajpal Yadav, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA No. 1265/Ahd/2016
Assessment Year 2012-13**

Unity Organics Pvt. Ltd., 906, Atma House, Nr. Sales Tax Bhavan, Ashram Road, Navrangpura, Ahmedabad- 380009 PAN: AAACU3621L (Appellant)	Vs	The DCIT, Circle-4(1)(2), Ahmedabad (Respondent)
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**Revenue by: Shri Prasoon Kabra, Sr. D.R.
Assessee by: Shri Rohan Popat, A.R.**

Date of hearing : 04-06-2018
Date of pronouncement : 21-06-2018

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee's appeal for A.Y. 2012-13, arises from order of the CIT(A)-8, Ahmedabad dated 26-04-2016, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

2. The assessee has raised following grounds of appeal:-

- "1. Not deleting the addition of Rs.7,92,826/- originally made by the AO by disallowing the interest paid in relation to loan to purchase land in industrial estate at the Dahej, GIDC u/s 36(1)(iii);*
- 2. Not relying upon the Para 16 of AS-16 (Borrowing Costs) prescribed by the Institute of Chartered Accountants of India which is mandatory in nature;*
- 3. Not considering the board resolutions of the company placed before the Hon'ble CIT(A), which were passed in the F.Y. 2007-08 to justify the intention of purchase of land,*

by presuming that the same were not furnished before the Assessing Officer at the level of original assessment proceedings.”

All the three grounds of appeal related to common issue therefore decided together as under:-

3. In this case, the brief fact of the case is that return of income declaring income of Rs. 55,51,380/- was filed on 26th Sep, 2012. Subsequently, the case was selected under scrutiny by issuing of notice u/s. 143(2) of the act on 23rd Sep, 2013. The assessee was engaged in the business of manufacturing of dyes and intermediates. On scrutiny, the assessing officer noticed that assessee has debited interest of Rs. 7,92,826 on borrowed capital for the purpose of purchase of GIDC Plot Dahej. On verification of the details furnished by the assessee, it was discerned to the assessing officer that assessee has been allotted plot at Dahej industrial estate by GIDC but there was no supporting detail to substantiate that assessee had used this plot for the purpose of business. The total price of the land was Rs. 1,10,45,639/- and out of that 70% was to be paid in equal installment with 15.5% rate of interest. The assessee failed to substantiate with supporting evidence that plot was used for the business purpose. Therefore, assessee has stated that as per section 36(1)(iii), the interest is only allowable if the capital is borrowed for the purpose of business. Consequently, the assessing officer has disallowed the interest of Rs. 7,92,826/- stating that assessee has not used the plot allotted by GIDC for the purpose of business during the year under consideration.

4. Aggrieved assessee filed appeal before the Id. CIT(A) The Id. CIT(A) has dismissed the appeal of the assessee by stating that deduction u/s. 36(1)(iii) cannot be allowed because the assessee has not put to use the allotted plot of land for the purpose of business during the year under consideration.

5. During the course of appellate proceedings before us, the Id. counsel has submitted written submission stating that the alternative land was required to be

purchased only for the purpose of ensuring shifting of the business operation without resulting into any extension of the existing business and said land was purchased for commercial and business purpose only and this expenditure was rightly claimed as allowable deduction while computing the income chargeable to tax u/s. 28 of the act. He has also submitted paper book containing written submission filed before the Id. CIT(A) referring judicial pronouncement of Lucknow ITAT in the case of Sharnath Infrastructure Ltd. (2009) 120 TTJ 216. On the other hand, Id. departmental representative has supported the order of Id. CIT(A).

6. We have heard the rival contentions and perused the material on record carefully. During the course of assessment proceedings, the assessing officer has disallowed interest expenses of Rs. 7,92,826/- claiming as incurred towards capital borrowed for the purpose of purchase of GIDC plot. We find that during the course of assessment proceedings and appellate proceedings the assessee had failed to substantiate as per provision of section 36(1)(iii) that the purchased asset/plot was used for the purpose of business. In spite of giving a number of opportunities, the assessee failed to demonstrate the use of the plot for the purpose of business and failed to controvert the findings of the Id. CIT(A). After considering the above facts and findings we observe that the judicial pronouncement in the case of Sarnath Infra. Pvt. Ltd. Vs. ACIT of ITAT Lucknow Bench as mentioned supra in this order is not applicable to the case as the facts of the case of the assessee are distinguishable from the above cited judgment of Lucknow ITAT. Therefore, we do not find any error in the decision of Id. CIT(A). Accordingly, the appeal of the assessee is dismissed.

7. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 21-06-2018

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Ahmedabad : Dated 21/06/2018

आदेश क० तालम अ० षत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपील अ० अधकरण,
अहमदाबाद