

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCHE, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.852/Ind/2016  
Assessment Year: 2009-10**

Khandelwal Pulse Mill, 23/2, Sajan Nagar, Indore (Appellant)	<u>बनाम/</u> Vs.	ITO-5(3), Indore (Revenue )
P.A. No.AADFK5361K		

Appellant by	Shri Pankaj Shah, CA
Respondent by	Shri K.G. Goyal Sr. DR
<b>Date of Hearing:</b>	<b>30.07.2018</b>
<b>Date of Pronouncement:</b>	<b>03.08.2018</b>

**आदेश / O R D E R**

**PER KUL BHARAT, J.M:**

This appeal is filed by the assessee against the order of Commissioner of Income Tax (appeals)-II, Indore, dated 29.04.2016 pertaining to A.Y. 2009-10. The assessee has raised following grounds of appeal:

- 1. On the facts and circumstances of the case, the Commissioner (Appeals) erred in upholding the addition*

*of Rs.4,31,414/- made on the ground that the same being Dandik (Penal ) Shulk and Interest.*

- 2. On the facts and circumstances of the case, the Commissioner (Appeals) erred in upholding the addition of Rs.13,500/- made out of Telephone expenses, on ground of personal user.*
- 3. On the facts and circumstances of the case, the Commissioner (Appeals) erred in upholding the adhoc addition of Rs.10,000/- made out of sundry expenses.*
- 4. On the facts and circumstances of the case, the Commissioner (Appeals) erred in upholding the addition of Rs.8,070/- out of interest expenses for not making TDS.”*

2. Briefly stated facts are that the case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) of the Income Tax Act 1961(hereinafter called as ‘the Act’) was framed vide order dated 16.12.2011. While framing the assessment, the assessing officer made additions on account of payment of penal Shulk and interest to Sandi Samiti, disallowance out of telephone expenses, disallowance out of sundry expenses and also made addition on account of non-deduction of tax at source.

3. Aggrieved by this the assessee preferred an appeal before the Ld. CIT(A) who after considering the submissions partly allowed the appeal. The ld. CIT(A) sustained the addition

made on account of disallowance of interest of penal shulk however in respect of telephone expenses was sustained to the extent of Rs.13,500/- on behalf of the expenses out of sundry expenses was sustained to the expenditure of Rs.10,000/- and addition made out of the interest expenses would not making TDS was uphold. Now the assessee is in appeal before the Tribunal.

4. Ground No.1 is against sustaining the addition of Rs.4,31,414/- in respect of Mandi Shulk. The ld. counsel for the assessee vehemently argued that authorities below failed to appreciate the facts in right prospective. He submitted that Mandi Shulk had been ceased by the state Government, the payment thereof is as allowable business expenditure. On the contrary Ld. DR opposed the submissions and supported the orders of the authorities below. We find that the Ld. CIT(A) has decided the issue as under:

*“I have considered the reasons brought out by the AO in the assessment order, the written submissions filed by the appellant, additional submissions/ evidences filed during the course of appeal proceedings, remand report of AO and also all the relevant documents filed by the appellant. After considering the above statements and submissions, it is observed that the plea taken by the appellant cannot be accepted at this stage particularly when the same have been properly considered by the*

*AO during the course of assessment proceedings. The contention of the appellant that the penal shulk/interest was duly paid in the F.Y. 2002-03, relevant A.Y. 2003-04 cannot be considered as tenable. Apparently, the demand pertained to the period between 20.01.86 to 07.02.90. Even if such demand was conveyed to the appellant during the period relevant to A.Y. 2003-04, the appellant will never pay the penalty and interest first and keep the principal amounts pending. In fact, an amount of Rs.4,15,400/- found paid and debited to partners capital account during said assessment year must have been the demand on account of principal amount. Therefore, the amount under consideration amounting to Rs.4,31,414/- was purely a Dandik Shulk/interest. The appellant has also not bifurcated the penalty and interest amount and no submission on this issue have been filed. Therefore, the AO has been found justified in making disallowance of above amount considering the same as penalty. This ground of appeal is dismissed.”*

5. The contention of the assessee was that the interest is allowable expenditure it was purely Mandi fee. We find both the authorities below have not made any inquiry from the concerned state authorities about the veracity of the statement of the assessee that amount of Rs.4,31,414/- consisting of interest and Mandi Shulk of earlier years and did not represent the penalty. In the absence of any material contradicting the claim of the assessee, we, therefore, do not see any reason to sustain such

disallowance. More particularly when assessee has furnished letter dated 07.07.2008 issued by Krishi Upaj Mandi Samiti, Indore. Hence, the assessing officer is directed to delete this addition.

6. Ground No.2 is against sustaining the addition of Rs. 13,500/-. The Ld. Counsel for the assessee submitted that the disallowance is made purely on the basis of conjecture and estimate basis. He submitted that such adhoc disallowance is made purely on the ground that the expenses are personal nature ought not to have been sustained by the Ld. CIT(A). The Ld. DR supported the order of the AO.

7. We have heard the rival contentions find that the expenditure is disallowed on the basis of estimation and no evidence is available for such disallowance. Under such fact, the disallowance cannot be sustained, we therefore, direct the AO to delete the addition.

8. Ground No.3 is against sustaining the addition of Rs.10,000/- out of sundry expenses. Ld. counsel submitted that the Assessing Officer has made this disallowance purely on adhoc basis. There is no evidence suggesting that the disallowance is based on any material. However, Ld. DR

opposed the submissions and supported the impugned orders.

We have heard the rival contentions. Admittedly, disallowance is made on adhoc basis. The AO has not brought on record any specific instance. Therefore, the addition so made cannot be sustained. The AO is hereby directed to delete the same. Thus, ground no.3 of the assessee's appeal is allowed.

10. Ground No.4 is against addition of Rs.8,070/- out of interest expenses. The Ld. counsel for the assessee submitted that the assessing officer was not justified in invoking the provisions of section 40(a)(ia). The ld. counsel for the assessee submitted that authorities below were not justified in making addition when the assessee had duly submitted Form No.15G before the Ld. CIT(A).

Ld. DR supported the order of the AO.

11. We have heard rival contentions the fact that the assessee had supplied form No.15G before the Ld. CIT(A) is not controverted by the Revenue, therefore, we do not see any reason to sustain this addition. The assessing Officer is directed to delete this addition.

12. In the result, the appeal filed by the assessee is allowed.

*Order was pronounced in the open court on 03.08.2018.*

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER

Indore; दिनांक Dated : 03/08/2018

*Patel, P.S./नि.स.*

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order  
**Private Secretary/DDO, Indore**