

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH “E”, MUMBAI  
BEFORE SH. B.R. BASKARAN, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH, JUDICIAL MEMBER  
ITA No.1170/Mum/2016 (Assessment Year- 2011-12)**

Snehanjali Retails Pvt Ltd, 1, Bonanza Arcade, S.V. Road, Andheri (w), Mumbai-400058 <b>PAN: AAACS 1600 H</b>	<b>Vs.</b>	Income Tax Officer 13(2)(2), Room No. 147, Aayakar Bhavan, M.K. Road, Mumbai 400020
(Appellant)		(Respondent)

ITA No.2131/Mum/2016 (Assessment Year- 2011-12)

Income Tax Officer 13(2)(2), Room No. 147, Aayakar Bhavan, M.K. Road, Mumbai 400020	<b>Vs.</b>	Snehanjali Retails Pvt Ltd, 1, Bonanza Arcade, S.V. Road, Andheri (w), Mumbai-400058 <b>PAN: AAACS 1600 H</b>
(Appellant)		(Respondent)

Assessee by : Sh. Bhupendra Shah (AR)

Revenue by : V. Justine (Sr.DR)

Date of hearing : 04.06.2018

Date of Pronouncement : 08.08.2018

**Order Under Section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. These cross appeals are directed against the order of Ld. Commissioner of Income-tax (Appeals)-21 [Ld. CIT(A)], Mumbai dated 22.01.2016 in the assessment order dated 17.02.2014 passed under section 143(3) of the Act for Assessment Year 2011-12. The assessee has raised following grounds of appeal:

- (1) *In the facts and in the circumstances of the case and in law, the learned AO erred in disallowing Rs. 15,08,734/-on account of credit card charges paid to ICICI Bank and others because the appellant could not furnished any justification/confirmation with supporting documentary evidence on the credit card commission paid.*
- (2) *In the facts and in the circumstances of the case and in law, erred in disallowing Rs. 20,52,959/-in respect of carried forward depreciation loss for which the rectification application is still pending before assessing officer.*
- (3) *In the facts and circumstances of the case and in law, the learned AO erred in disallowing Rs.12,85,012/-in respect of MAT Credit for which the rectification application is still pending before assessing officer.*

2. The revenue has appeal has raised following grounds of appeal.

- (1) *Whether on the facts and circumstances of the case and in law, the learned Commissioner (Appeals) erred in allowing Rs. 1,11,74,976/-, which was disallowed by assessing officer under section 40A (2)(b)& 37(1) of the income tax act.*
- (2) *Whether on the facts and circumstances of the case and in law, the learned considerably erred in allowing excess interest of Rs. 25 Lacks paid to M/s Snehanjali Electronics & Appliances Private Limited disallowed by assessing officer.*
- (3) *The appellant prays that the order of Commissioner appeal on the above grounds be set aside and that the assessing officer shall be restored*

3. Brief facts of the case are that assessee is a Private Ltd Company dealing in Electronic and Electronic appliances filed its return of income for assessment year 2011-12 on 29 September 2011 declaring total income at Rs. Nil. The return of income was selected for scrutiny and assessment was completed on 24 March 2014. The assessing officer while passing the assessment order made addition by disallowing Rs. 1,11,74976/-under

section 40A(2)(b) and under section 37(1), disallowed interest expenses of Rs. 25 lacks, disallowed Credit Card charges paid to ICICI Bank of Rs. 15,08,734/-, not allowable carried forward depreciation of Rs. 20,52,959/- and not allowable MAT Credit for Rs.12,85,012/-. On appeal before Commissioner (Appeals), disallowance of Rs. 1,11,74,976/- under section 40A(2)(b) and under section 37(1) and disallowance of interest expenses of Rs. 25 lacks was allowed, however, other additions/disallowance was confirmed. Therefore, aggrieved by the order of Commissioner (Appeals) both the parties have filed their respective appeals raising the grounds of appeal as referred above. First we are taking the appeal filed by assessee.

4. We have heard learned authorised (ld. AR) of the assessee and learned departmental representative (ld. DR) for the revenue and perused the material. At the outset of hearing the ld. AR of the assessee submitted that he is not pressing ground No. 2 to 4 raised by assessee in his grounds of appeal. Considering the submission of ld. AR of the assessee ground No. 2 to 4 of the appeal by assessee are dismissed as not pressed.
5. Ground No. 1 of the appeal raised by assessee relates to disallowance of Credit Card expenses paid to ICICI Bank. The learned AR of the assessee submits that a number of customers make payment through Credit Card the instead of paying the cash over the counter against the goods purchased.

The Banks deduct the commission before remitting the amount paid by customer through Debit/ Credit Cards to the assessee. For the observation of the assessing officer that the assessee had not furnished justification or confirmation with supporting documentary evidence, the Id. AR submit that during the previous year related with the assessment year under consideration ICICI Bank Credit Card department was merged with the ICICI Bank, as a result of which ICICI Bank was not able to provide the necessary information regarding the charges debited. However, the assessee furnished documentary evidences before Id. Commissioner (Appeals) The learned Commissioner (Appeals) instead of appreciating the evidence confirmed the addition.

6. On the other hand the learned DR for the revenue supported the order of authorities below. The Id. DR AR further that assessee has not filed sufficient documentary evidence either in the form of confirmation or other evidence from ICICI Bank to substantiated its contention. The lower authorities made the disallowance in absence of the sufficient evidence.
7. We have considered the rival submission of the parties and gone through the orders of his below. We noted that the assessing officer disallowed the entire amount on account of Credit Card expenses holding that assessee has not furnished any evidence, justification or confirmation of Bank with

supporting evidence, despite providing reasonable opportunity. We have further noted that the learned Commissioner (Appeals) confirmed the action of assessing officer with similar lines. Before us the assessee has filed statement of transactions in current account of the assessee from 1<sup>st</sup> April 2010 to 31<sup>st</sup> March 2011 issued by ICICI Bank (page No. 75 to 201 of the Paper Book). We have further noticed the lower authorities made addition / disallowance only on their observations that the assessee failed to substantiate the claim of Credit Card expenses with sufficient documentary evidence. Considering the relevancy of documents furnished by assessee for the entire relevant financial year with regards to details of the Credit Card expenses, therefore, we deem it appropriate to restore this issue to the file of assessing officer to verify the facts and grant appropriate relief to the assessee in accordance with law. In the result this ground of appeal is allowed for statistical purposes.

8. In the result appeal of the assessee is partly allowed.

**ITA No. 2131/M/2016 by Revenue.**

9. Ground No. 1 relates to deleting the addition/ disallowance of Rs. 1,11,74,976/- under section 40A(2)(b) & 371(1) of the Act. The ld. DR for the revenue supported the order of assessing officer. The ld. DR further submits that during the relevant financial year the assessee shown

purchases from the related party i.e. Snehanjali Electronics & Appliances Pvt Ltd (SEAPL). During the assessment the assessing officer noted that the assessee has raised debit notes @ 3% at the end of every month on the purchases made over and above the value purchase bills and total 3% debit notes at the end of year was shown at Rs. 1,11,74,976/-. The assessee failed to furnish with supporting evidence as to why the assessee company to paid such percentage without any agreement over and above the actual cost of purchase. There is no written contract with the assessee and its sister concern. The same amount was disallowed under section under section 40A (2)(b) & 371(1) of the Act. The Id. Commissioner (Appeals) allowed disallowance without giving any special reasons. The Id DR prayed to restore the order of assessing officer by reversing the order of Id Commissioner (Appeals).

10. On the other hand the Id. AR for the assessee supported the order of the Id. Commissioner (Appeals). The Id. AR for the assessee further submits that SEAPL had a dealership of Appliances Company like ONIDA and Sony, whereas the assessee does not have such dealership. As SEAPL issued sales bill to the assessee on cost to cost basis. Therefore, 3% margin amounting to Rs.1,11,74,976/- was charged by SEAPL, which is reasonable one. The assessing officer has not referred to any comparable

instances to substantiate his view that excessive payments have been made by the assessee. The Id. AR of the assessee further submits the assessee explained before the assessing officer as well as before Commissioner (Appeals) that SEAPL is not concerned covered under section 40A(2)(b) of the Act. None of the shareholders and directors of the assessee company are holding more than 20% of the voting power of SEAPL. The materials purchased from SEAPL have not been purchased from any other supplier by the assessee. No addition on account of debit notes have been made in earlier years for assessment year 2009- 10 and also in assessment year 2012- 13, however, the same assessment have been completed under section 143(3).

11. We have considered the rival submission of the parties and perused the orders of authorities below. The assessing officer made the addition on his observation that the assessee has debited 3% of the purchases from related party at the end of year and made the payment of Rs.11174976/-. The payment was made over and above to the cost of purchase bills of SEAPL. We have noticed that the assessing officer presume that cost paid to SEAPL is the market price at which the appliances were available in the market without making any comparable prices of the similar material or goods.

12. However, the learned Commissioner (Appeals) after examining the shareholder list of the Assessee Company and SEAPL concluded that none of the shareholder is holding for more than 10% of shares during the year in either of the two companies. As one of the shareholder has substantial interest in two companies. Moreover, SEAPL has filed return of income showing the positive income. Therefore, there is no dispute about the evasion of tax. The learned Commissioner (Appeals) further concluded that the assessing officer has not brought anything on record to show that the purchases are at the higher than the market value. The learned Commissioner (Appeals) observed that the goods at the price from the manufacturer may not be available to buy at a lower price other than a dealer. And there is no evidence on record that particular purchases were at the higher prices than the price at which the similar is goods is available at fewer prices in the market. The learned Commissioner (Appeals) also observed that the assessee's purchased from the sister concern in the earlier assessment years were not disallowed by the assessing officer and deleted the addition under section 40A (2)(b) of the act. No contrary facts or law are brought to our notice to taking contrary view. Therefore, we do not find any illegality or infirmity in the order passed by learned Commissioner (Appeals). So far as disallowance under section 37(1) are concerned , we

have also noted that the assessing officer has not given any specific reason as to why the expenses incurred on purchases by the assessee were not wholly and exclusively for the purpose of business. We have noted that the assessee has made the payment to SEAPL for purchase of electronic appliances for the purpose of its business activity; therefore, the expenditure incurred wholly and exclusively for the purpose of business. Hence, the disallowance under section 37(1) is also deleted. We have one more reason to affirm the order of Id. Commissioner (Appeals) that no such disallowance by assessing officer in past on similar facts under section 37(1) was disallowed, though the assessment was completed under section 143(3) of the Act. In the result the ground of appeal raised by the revenue is rejected.

13. Ground No. 2 relates to deleting the disallowance of interest expenses of Rs. 25 lacks. The Id. DR for the revenue supported the order of the assessing officer. The Id. DR further submits that the assessee has shown/ paid excess interest to its sister concern than the payment made to the other parties.

14. On the other hand the Id. AR for the assessee supported the order of the Id. Commissioner (Appeals). The Id. AR further submits that the assessing officer has not raised any quarry during the assessment proceedings and

disallowed the interest expenses without providing opportunity. The assessing officer disallowed the interest expenses at adhoc basis.

15. We have considered the rival submission of the parties and perused the orders of authorities below. We have seen that the assessing officer disallowed Rs. 25 lacks as business expenses without making any show cause to the assessee during the assessment proceedings. While making disallowance the assessing officer noted that the assessee had charged interest @ 15% at Rs. 76,00,261/- to SEAPL , whereas no other parties i.e. family members of Mulchandani, the assessee has charged the interest @ 10% and claimed business expenses, therefore he disallowed excess 5% interest of Rs. 25 lacks paid to SEAPL. During the first appellate stage, the assessee explained that the borrowing from SEAPL by the assessee @ 15% is reasonable, which can be seen that the borrowing from the banks is @12.5% to 13.5%. In making borrowings from the banks the further processing fees, bank charges and mortgage charges are incurred. However, no such charge was paid while borrowing from SEAPL. After considering the contention of assessee the learned Commissioner (Appeals) observed that none of the shareholder in two companies is holding more than 10% of shareholding. Moreover, if the funds are raised at lower rates from the shareholder and family members, it cannot be assumed that the

same is the market rate. The assessee has availed unsecured loan of Rs. 7.54 crore from SEAPL at the rate of 15% is not excessive as compared with the secured loan raise from the banks @ 12.5% to 13.5% and deleted the ad hoc disallowance of Rs. 25 lacks. No contrary facts of law are brought to our notice to take any other view. We have noted that the order of learned Commissioner (Appeals) does not require any further interference as we do not find any infirmity or reliability in the order. In the result the ground No. 2 of the appeal is dismissed.

16. In the result the appeal of the revenue is dismissed.

Order pronounced on 8<sup>th</sup> day of August 2018 in open court.

Sd/-  
**(B.R.BASKARAN)**  
**ACCOUNTANT MEMBER**  
Mumbai, Date: 08.08.2018

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

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**Copy of the Order forwarded to :**

1. Assessee
3. The concerned CIT(A)
5. DR "F" Bench, ITAT, Mumbai
6. Guard File

2. Respondent
4. The concerned CIT

**BY ORDER,**  
Dy./Asst. Registrar  
ITAT, Mumbai