

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं डा. बी.आर.आर, कुमार, लेखा सदस्य
BEFORE: Sh. SANJAY GARG, JM & DR. B.R.R. KUMAR, AM

आयकर अपील सं./ ITA NO. 592 to 594/Chd/2018
निर्धारण वर्ष / Assessment Years : 2012-13 & 2014-15

The DCIT Central Circle-1 Ludhiana	बनाम	M/s Genex Industries Ltd. 228-G, Industrial Area-A Cheema Chowk, Ludhiana
स्थायी लेखा सं./PAN NO: AAACB6770H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sanjay Sood
राजस्व की ओर से/ Revenue by : Shri. Ashish Gupta
सुनवाई की तारीख/Date of Hearing : 23/10/2018
उद्घोषणा की तारीख/Date of Pronouncement : 31/10/2018

आदेश/Order

PER DR. B.R.R. KUMAR, A.M

All the above appeals have been filed by the Revenue against the order of the Ld. CIT(A)-2, Jalandhar dt. 22/02/2018.

2. Since the issues raised in all the appeals are common therefore they are being disposed off by way of this common order for the sake of convenience. We shall take ITA No. 592/Chd/2018 for dealing as a lead case wherein Revenue has raised following grounds:

1. Whether the Ld. CIT(A) has erred both in law and on fact s in deleting the addition made by Assessing Officer under section 36.(i)(iii) of the I.T.Act, 1961 without considering the fact that the assessee has diverted its interest bearing funds to the sister / associate concerns without any business consideration or commercial expediency and on the other hand claimed huge amount of interest expenditure in the P&L Account.

2. Whether the Id. CIT(A) has erred both in law and on facts by allowing interest under section 36(i)(iii)n of the I.T. Act, 1961 without appreciating the fact that the impugned interest claimed was clearly for non business purpose.

3. Brief facts of the case are that the Assessing Officer has disallowed the entire interest of Rs. 7,18,09,666/- debited to P&L Account by the assessee on the grounds that the assessee is paying interest on the bank loans, unsecured loans and at the same time extending interest free loans to the related concerns to the tune of Rs. 60.61 Crores.

4. Before the Ld. CIT(A) the assessee submitted as under:

i. Amount given to Penex Polyfab Pvt Ltd in subject period of Rs 60,61,00,000 is out of fresh share capital raised during the year from M/s Genex Fincap Pvt Ltd which is much more than aforesaid amount & same is not out of interest bearing funds;

ii. Interest claimed is on term loan sanctioned for specific purpose and cannot be correlated to amount advanced to aforesaid concern;

iii. Supreme Court in Hero Cycles 379 ITR 345 has overruled P&H High Court decision in Abhishek Industries 286 ITR 1 as relied by Ld. AO;

iv. As regards to disallowance of Rs. 7,18,09,666 the assessing officer has just recorded that the assessee company has diverted interest-free funds to the other concerns of the company. The assessing officer has never asked the assessee company to show cause as why this addition should not be made as the assessee company was always ready and willing to answer to the questions of the assessing officer. The assessing officer has stated that total interest adapted in the profit and loss account for the year under consideration is amounting to Rs. 7, 18,09,666 but the assessing officer never ever gave the breakup of the said amount while including bank charges.

v. The assessee company is a manufacturing unit having a turnover of Rs. 3,44,77,68,347.8 I/-(Rs.344 crores) for this huge turnover the assessee company has raised some term loans, working capital loans and some amount from the family members in the shape of unsecured loans. The whole amount raised for business of manufacturing only.

vi. The breakup of the interest claimed is as under:

1. Bank charges	Rs. 20,97,08,007.58
2 Interest on unsecured loans	Rs. 20,34,196.37
3. Interest on term loans	Rs. 1,50,21,866.92
4 Interest in working capital	Rs. 50,17,75,596.00
Total	Rs. 7,18,09,666.87

The Assessing Officer has disallowed this expenditure in toto.

vii. The bare perusal of the balance sheet would also show that there has been an increase in the share capital of the company by Rs.50 lakhs and share premium of Rs 82.50 Crores. The total amount raised during the Financial Year is Rs 83 Crores.

viii. The details of the share capital, share premium and the advances given is as under:

Share Capital Raised	50,00,000
Add: Share Premium	82,50,00,000
Total	83,00,00,000
Less: Advance to Genex Polyfab Private Ltd.	60,61,00,000
Balance	22,39,00,000

5. The assessee company is left with 22.39 Crores of interest free funds even after extending the loan to the group concern which can be deciphered from the above table.

i. In nutshell the details of the finance cost / interest debited to P&L Account is as under:

S.No.	Particulars	Amount	Amount
A Interest on Term Loans			
1	Kotak Mahindra Bank Limited (Vehicle Loan) Interest	126771.00	
2	ICICI Bank (Vehicle Loan) Interest	NIL	
3	HDFC Bank (Vehicle Loan) Interest	NIL	
4	Kotak Mahindra Prime Limited Vehile Loan	791383.00	
5	BMW India Private Limited (Car Loan)	580024.00	
6	United Bank of India (Term Loan) (No Fresh Term Loan availed during the year, only	11018334.00	
7	Bank of Maharashtra (Term Loan) (No Fresh Term Loan availed during the year, only	2505355.00	
	Total Interest on Term Loans as per Balance Sheet		15021867.00
	B Interest on Working Capital Loans		51775596.00
	C Interest on Unsecured Loans		2034196.37
	D Bank Charges		2978007.58
	Total Finace Cost debited to Profit & Loss A/c (A+B+C+D)		<u>71809666.95</u>
Genex Industries Limited AM 2012-13			
Details of Term Loan Interests debited to the Profit & Loss A/c as as under:			
S.No.	Particulars	Amount	Amount
1	Kotak Mahindra Bank Limited (Vehicle Loan) Interest	126771.00	
2	ICICI Bank (Vehicle Loan) Interest	NIL	
3	HDFC Bank (Vehicle Loan) Interest	NIL	
4	Kotak Mahindra Prime Limited Vehile Loan	791383.00	
5	United Bank of India (Term Loan) (No Fresh Term Loan availed during the year, only repayment of Previous Year Loan. Hence No Fresh Borrowings during the year)	11018334.00	
6	Bank of Maharashtra (Term Loan) (No Fresh Term Loan availed during the year, only repayment of Previous Year Loan. Hence No Fresh Borrowings during the year)	2505355.00	
7	BMW India Private Limited (Car Loan)	580024.00	
	Total Interest on Term Loans as per Balance Sheet		<u>15021867.00</u>
(Copy of accounts of Terms Loans are attached for your kind Reference)			
4.2 The appellant has further submitted as under:-			
It is humbly submitted that some queries were raised by your good self while assessing the appeal of Genex Industries Limited of Assessment Year 2012-13 in which it is submitted stated as under:			
1. The breakup of the interest disallowed by the AO while making assessment is as under:			

6. Based on the facts above the Ld. CIT(A) has deleted the addition by adjudicating as under:

4.2 I have gone through the assessment order passed by the AO, submissions filed by the appellant and find that a disallowance of Rs. 7,18,09,666 has been made by the AO under section 36 (1)(iii) of the IT act on account of interest expenses claimed in the P& L account. The disallowance was made by the AO on the ground that interest-free loans have been given by the appellant in the period under consideration. During the course of assessment proceedings, it was found by the AO that appellant has given interest free loans and advances of Rs.60,61,00,000 to M/s Genex Polyfab Private Limited during the year under consideration and has also claimed interest expenses of Rs. 7,18,09,666 in the P&L account. It was held by the AO that appellant is paying interest on the bank loans and unsecured loans raised from the family members and related parties and at the same time has given interest loans and advances to other sister companies. It is seen from the order that AO has placed reliance on the judgement of honourable Punjab and Haryana High Court given in the case of Abhishek Industries. Accordingly, it was held that interest-bearing funds have been diverted and have not been used for business purposes and therefore, interest expenditure cannot be allowed under section 36(I)(iii) of the IT act.

4.3 The appellant has submitted that AO was not justified in making a disallowance on account of interest expenses claimed as the appellant was never given an opportunity to explain this issue. It is submitted that AO has never raised this issue in the course of assessment proceedings and therefore disallowance made on this account is not justified. The appellant has also placed on record a copy of the note-sheet to support its contentions. It is also stated that no show cause notice was ever issued before making the disallowance.

4.4 The appellant has submitted that during the preceding year fresh share capital including share premium of Rs. 82.50 crore was raised which is much more than the amount of loans and advances given to other entities. It is further submitted that interest claimed is on account of loan sanctioned for specific purposes and therefore, this amount cannot be related to the amount advanced to the related company. The appellant has stated that term loans are taken against the vehicles and has filed complete details of the same. The financial statements have been placed on record in the course of assessment proceedings and were accepted by the AO. The appellant has placed reliance on the judgement of Honourable Supreme Court in the case of Hero Cycles as reported in 379 ITR 345, which is after the decision of Honourable Punjab and Haryana High Court given in the case of Abhishek Industries, which has been relied upon by the AO while making the disallowance.

4.5 The appellant has further submitted that total turnover is Rs. 344 crore and term loans, working capital loans and other unsecured loans have been raised for the purposes of the business. It is also stated that AO has failed to consider the breakup of total financial expenses of Rs. 7.18 crore given in the financial statements, which has been disallowed by the AO. It is submitted that this amount consists of Rs. 2.09 crore of bank charges also, which could not have been disallowed by the AO. It is stated that AO was not justified in making the disallowance without establishing any linkage as to how these funds were diverted.

4.6 The appellant has submitted that sufficient interest free funds were available . business and advances have been given to Genex Polyfab Private Limited out of these funds. The appellant has also placed reliance on the judgement of Honourable Punjab and Haryana High Court in the case of Max India Ltd 398 ITR 209, in the case of Kapsons 381 ITR 204 and also in the case of Bright Enterprises 381 ITR 107.

4.7 I have carefully considered the material available on record including the judicial citations given Therein and find that disallowance of interest has been made by the AO by looking at the financial statements of the appellant. I find

that no opportunity was given to the appellant in the course of assessment proceedings before making the disallowance on this issue. Further, I find that contentions of the appellant with regard to the availability of interest-free funds are correct as is seen from the financial statements that share capital including share premium of Rs. 82.50 crore was raised in the preceding year and interest-free loans and advances of Rs. 60.61 crore has been given to the related party in the current year. The appellant has explained that share capital and free reserves & surplus amounting to Rs. 109.19 crore were available as on 31/03/2012 and therefore, the question of transfer of interest bearing funds does not arise. The appellant has also cited the latest decision of Hon'ble ITAT Chandigarh Bench in the case of Kissan Fats Ltd. (2017) 162 ITD 404 on this issue. I have also gone through the latest decisions of Honourable Punjab and Haryana High Court in the case of Max India Ltd, Kapsons and Bright Enterprises and find that it has been held by the Honourable Punjab and Haryana High Court that no disallowance of interest could be made, if sufficient interest free funds are available in the business.

4.8 Thus, considering all these factors and judicial decisions, I hold that AO was not justified in making a disallowance of interest claimed under section 36(l)(iii) of the IT Act. Accordingly, AO is being directed to delete the addition of Rs. 7,18,09,666 made under this head.

7. We find that the decision of the Ld. CIT(A) is based on the relevant facts pertaining to the financial position of the assessee after duly analyzing the availability of own funds and taking into consideration the orders of the Tribunal, judgments of the jurisdictional High Court. Interfering or altering in the well reasoned order of the Ld. CIT(A) would only disturb the settled position of law in force and hence the order of the Ld. CIT(A) is hereby confirmed.

8. As a result, appeal of the Revenue is dismissed.

Sd/-

संजय गर्ग
(SANJAY GARG)

न्यायिक सदस्य/ Judicial Member
AG

Date: 31/10/2018

Sd/-

डा. बी.आर.आर, कुमार,
(DR. B.R.R. KUMAR, AM)
लेखा सदस्य/ Accountant Member

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File