

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, "बी" चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B', CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं डा. बी.आर.आर, कुमार, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 300/CHD/2018

निर्धारण वर्ष / Assessment Year : 2014-15

The DCIT, Central Circle-III, Ludhiana	बनाम	M/s SEL Textiles Ltd. 274, G.T. Dhandari Khurd, Ludhiana
स्थायी लेखा सं./PAN NO: AANCS0401M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Sh. G.S. Phani Kishore, CIT DR

राजस्व की ओर से/ Revenue by : Sh. Ashwani Kumar, CA

सुनवाई की तारीख/Date of Hearing : 30.10.2018

उद्घोषणा की तारीख/Date of Pronouncement : 14.11.2018

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the Revenue against the order dated 20.12.2017 of the Commissioner of Income Tax (Appeals)-2, Jalandhar [hereinafter referred to as CIT(A)].

2. The Revenue in this appeal has taken following effective grounds of appeal:-

1. *Whether the Ld. CIT(A) has erred in law and facts in deleting the addition of Rs. 2,25,54,011/- made by the Assessing officer u/s 36(i)(iii) on account of proportionate disallowance of interest expenditure on non-business interest free advances made by the assessee.*

2. *Whether the Ld. CIT(A) has erred in law and facts in deleting the addition of Rs. 9,23,231/- on account of delayed deposit of employee's contribution to ESIC, FP and EPF by ignoring provisions of section 36(1)(iv) of the I.T. Act, 1961 and CBDT Circular No. 22/2015 dated 17.12.,2015.*

3. **Ground No.1:** Ground No.1 is regarding the action of the CIT(A) in deleting the disallowance made by the Assessing officer u/s 36 (i) (iii) of the Income-tax Act, 1961 (in short 'the Act'). The Ld. Assessing officer has made the impugned disallowance while observing that the assessee had given interest free advances of Rs. 38.49 crores to M/s 3A Exports. He further observed that the assessee, on the other hand, had claimed interest expenditure. He, therefore, held that the interest bearing funds had been used for making the impugned disallowance and accordingly made the impugned disallowance. The Ld. CIT(A), however, deleted the aforesaid disallowance made by the Assessing officer, observing that the assessee had its own sufficient funds to meet the aforesaid investments. He, in this respect observed that against the investment of Rs. 38.49 cores, as per the balance sheet, the assessee company had share capital and reserves as on 31.3.2014 at Rs. 530.77 crores. He, in this respect has relied upon the decision of the Hon'ble Jurisdictional High Court in the case of 'CIT Vs. Kaspsons Associates', 381 ITR 204 (P&H) and further of the Hon'ble Supreme Court in the case of 'Hero Cycles Ltd., 379 ITR 347 (SC) and deleted the disallowance. The relevant part of the order of the Ld. CIT(A) on this issue is reproduced as under:-

"7. The ground No.4 of the appeal is against the order passed by the AO who erred in disallowing a sum of Rs. 2,25,54,011/- out of interest paid by resort to provisions of Section 36(1)(iii) on account

of interest free advances.

7.1 The appellant has submitted that it had given an advance of Rs. 38.49 crores to M/s 3A Exports. It is submitted that the said advance was given out of the internal accruals and interest free funds available in the business. The reserves and share capital of the appellant company are much more than the amounts advanced. Perusal of the Balance Sheet of the appellant company reveal that the total of share capital and reserves of the appellant company as on 31.03.2014 were Rs. 530.77 crores. Under these Circumstances, also there was no justification on the part of the Assessing Officer to disallow a sum of Rs. 2,25,54,011/- (calculated @12% on the amounts advanced) out of interest account.

7.2 Further, appellant has placed reliance on the latest decision of the Hon'ble Supreme Court in the case of Hero Cycles Ltd. reported in 379 ITR page 340, wherein, their lordships have held that, if the funds available with the assessee are more than the amounts advanced, no disallowance of interest is warranted. The appellant has also cited the latest judgment of the Hon'ble Jurisdictional High Court in the case of CIT Vs. Kapsons Associates reported in 381 ITR Page 204, their lordships have held that the appellant had sufficient interest free advances from its Directors, Shareholders, Members and their families to cover the interest free advances made by the appellant. The interest on the borrowings to the extent interest free advances is not to be disallowed.

7.3 Assessing officer has stated in the order that the advances were given to its sister concerns and therefore, placing reliance on the judgment of honorable jurisdictional High Court in the case of Abhishek Industries Ltd. 286 ITR 1 the disallowance was made for the proportionate expenditure incurred on account of interest. I have carefully considered the facts of the case and have also gone through the copy of account and balance sheet of the appellant company to ascertain the claim made by the appellant with regard to the availability of interest-free funds in the business. I have also gone through

the judicial decisions which have been relied upon by the appellant on this issue.

7.4 In view of the judgment of Hon'ble Supreme Court in the case of Hero Cycles Ltd and also of Hon'ble jurisdictional High Court in the case of Kapsons (which is after the decision of Abhishek Industries) where it has been held that no disallowance could be made under this section if availability of sufficient interest free funds in the business has been established. Accordingly, taking these facts and judicial decisions into account, AO is being directed to delete the disallowance of Rs.2,25,54,011/-made on this account. Thus, appeal filed by the appellant on this ground is allowed.”

4. The Ld. DR though has relied on the findings of the Assessing officer, however, could not rebut the factual findings given by the Ld. CIT(A) on the above issue.

In view of this, we do not find any infirmity in the order of CIT(A) on this issue.

5. **Ground No.2:** This ground is in relation to the action of the CIT(A) in deleting the addition of Rs. 9,23,231/- on account of delayed deposit of employees contribution to ESIC, FP and EPF. The Ld. CIT(A) has dealt with this ground in para 8 of this impugned order and observed that the assessee had deposited the aforesaid payments on account of employees contribution to ESIC, and EPF, before the date of filing of the return. He, therefore, has relied upon the provisions of section 43B of the Act and decision of the Hon'ble Jurisdictional High Court in the case of 'CIT Vs. Lakhani India Ltd'., 188 taxman.132 and of the Hon'ble Supreme Court in the case of 'CIT Vs. Alom Extrusions Ltd., 319 ITR 306 and deleted the impugned disallowance made by the Assessing officer.

6. Before us, Ld. DR could not point out any distinguishing facts or case laws justifying our interference in the order of the CIT(A) on this issue.

In view of our above observation, there is no merit in the appeal of the Revenue and the same is accordingly dismissed.

Order pronounced in the Open Court on 14.11.2018.

Sd/-
(बी,आर.आर. कुमार / B.R.R. KUMAR)
लेखा सदस्य/ Accountant Member

Sd/-
(संजय गर्ग / SANJAY GARG)
न्यायिक सदस्य /Judicial Member

Dated : 14.11.2018
“आर.के.”

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

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar