

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

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं, डा. बी.आर.आर. कुमार, लेखा सदस्य
BEFORE: SMT. DIVA SINGH, JM & Dr. B.R.R. KUMAR, AM

आयकर अपील सं./ ITA NO. 872/Chd/2014

निर्धारण वर्ष / Assessment Year : 2011-12

M/s Chadha Super Cars (P)Ltd. G.T. Road Ludhiana	बनाम	Addl. CIT, Range V Aaykar Bhawan Rishi Nagar Ludhiana
स्थायी लेखा सं./PAN NO:	AABCC6944R	
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri. Kuldeep Singh
राजस्व की ओर से/ Revenue by : Smt. Chandrakanta

सुनवाई की तारीख/Date of Hearing : 27/09/2018

उद्घोषणा की तारीख/Date of Pronouncement : 16/11/2018

आदेश/Order

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

The present appeal has been filed by the Assessee against the order of the Ld. CIT(A)-II, Ludhiana dt. 05/09/2014.

2. In the present appeal Assessee has raised the following grounds:

1. That the Ld. Commissioner of Income Tax (Appeals)-II, Ludhiana has erred in confirming the disallowance u/s 36(1)(iii) of the Income Tax Act, 1961 of Rs. 720000/- on account of investment made by the company in shares of m/s Renny Steel Casting (P) Ltd. and M/s Renny Strips (P) Ltd. without considering the reply filed by appellant during the course of proceedings, whereas the above said advances was not made from the borrowed funds. Therefore, disallowance of Rs. 720000/- made u/s 36(1)(iii) of the Income Tax Act, 1961 by the Ld. Commissioner of Income Tax (Appeals)-II, Ludhiana may be deleted.

2. That the Ld Commissioner of Income Tax (Appeals)-II, Ludhiana has erred in making the disallowance of Rs. 30000/- u/s 36(1)(iii) of the Income Tax Act, 1961 on account of advance given to Sh. Daljit S. Puri which was made from the current account and not from the borrowed funds and for the business purposes. As the Ld. Commissioner of Income Tax (Appeals)-II, Ludhiana confirm the disallowance under section 36(1)(iii) of the Income Tax Act, 1961 without considering the reply filed by the appellant during the course of proceedings. Therefore, disallowance made u/s 36(1)(iii) of the Income Tax Act, 1961 by the Ld Commissioner of Income Tax (Appeals)-II, Ludhiana may be quashed

3. That the Ld. Commissioner of Income Tax (Appeals)-II, Ludhiana has erred in making the disallowance of Rs. 30000/- u/s 36(1) (iii) of the Income Tax Act, 1961 on account of advance given to Smt. Promila Puri which was made from the current account and not from the borrowed funds and for the business purposes. As the Ld. Commissioner of Income Tax (Appeals)-II, Ludhiana confirm the disallowance under section 36(1) (iii) of the Income Tax Act, 1961 without considering the reply filed by the appellant during the course of proceedings. Therefore, disallowance made u/s 36(1) (iii) of the Income Tax Act, 1961 by the

Ld. Commissioner of Income Tax (Appeals)-II, Ludhiana may be quashed.

4 That the Ld. Commissioner of Income Tax (Appeals)-II, Ludhiana has erred in confirming the disallowance of Rs. 126628/- u/s 36 (1) (iii) of the Income Tax Act, 1961 on account of advance given to M/s Rahul Sales. Whereas, the amount was advanced out of the current account and not from the borrowed funds. As the-Ld. Commissioner of Income Tax (Appeals)-II, Ludhiana confirm the disallowance u/s 36(1)(iii) of the Income Tax Act,1961 without considering the reply filed by the appellant during the course of proceedings. Therefore, disallowance of Rs. 1266628/- made under section 36(1)(iii) of the Income Tax Act,1961 by the Ld. CIT(A)-II, Ludhiana may be quashed.

3. The facts of the case in brief are that the assessee has made investments in the shares of the Company namely R.S. Castings Pvt. Ltd. and R.S. Strips of Rs. 60,00,000/-. In addition the assessee has given advances to the persons namely Shri. Daljeet and Smt. Pramila of Rs. 2,50,000/- each and of Rs.44,67,207/- to one concern namely Rohit Sales.

4. The Assessing Officer disallowed the proportionate interest @12% on the advances given to these parties mentioned above addition on the grounds that the entire money in a business entity comes from a common kitty. The Assessing Officer held that the monies received as share capital, as term loan as working capital as sales proceedings do not have different color. Whatever are the receipts in the business that have the color of business receipts and have no separate identification of the source.

5. The Ld. CIT(A) confirmed the disallowance relying on the ratio laid down by the Hon'ble Punjab & Haryana High Court in CIT Vs. Abhishek Industries Ltd. 286 ITR 1.

6. Before us, Ld. AR relied on the judgment of Supreme Court in the case of Hero Cycles Pvt. Ltd. Vs. CIT C.A No. 514/2008 (2015) Supreme Court, while the Ld. DR strongly supported the orders of the lower authorities.

7. Having heard both the parties, we find that as per the ratio laid down by the Hon'ble Supreme Court in the case of Hero Cycles(P) Ltd. Vs. CIT civil appeal no. 514 of 2008 (2015) CCH0097ISCC dt. 05/11/2015, ACIT Vs. Omax Bikes Ltd., (2016) 156 ITD 566 (Chd. Trib.), DCIT Vs. Sindhu Realtors Pvt. Ltd. (2016) 45 ITR

448 (Delhi Trib) no disallowance is warranted wherein the assessee had sufficient own funds in the form of share capital, reserve and surplus, non interest bearing funds, the presumption would be that the interest free funds are utilized for non interest bearing investments or expenses and interest bearing borrowings are utilized for purpose of the business .

8. Since in the instant case, the assessee has own funds to the tune of Rs. 78,35,750/- in the form of share capital and Rs. 6,00,74,901/- in the form of general reserves which is more than the interest free loans advanced which is to the tune of Rs. 1,09,67,207/-, therefore, the addition of Rs. 63,00,000/- made by the Ld. Assessing Officer under section 36(1)(iii) is considered to be not in consonance with the established judicial pronouncements, and therefore hereby directed to be deleted.

9. In the result appeal of the Assessee is allowed.

Order pronounced in the open Court.

Sd/-

दिवा सिंह
(DIVA SINGH)

न्यायिक सदस्य/ Judicial Member

Sd/-

डा. बी.आर.आर. कुमार,
(Dr. B.R.R. KUMAR)

लेखा सदस्य/ Accountant Member

AG

Date: 16/11/2018

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