

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'B' BENCH, KOLKATA**

**(Before Sri J. Sudhakar Reddy, Accountant Member & Sri Aby T. Varkey, Judicial Member)**

**ITA No. 2260/Kol/2017**  
Assessment Year: 2010-11

*Assistant Commissioner of Income Tax, Circle-4(1), Kolkata.....Appellant*

*M/s. Duncans Industries Ltd.....Respondent*  
*31, N.S. Road*  
*Duncans House*  
*Kolkata - 700 001*  
*[PAN : AAACD 9302 P]*

**Appearances by:**

*Shri Subash Agarwal, Advocate, appeared on behalf of the assessee.*

*Shri Sanker Halder, Addl. CIT Sr. D/R, appearing on behalf of the Revenue.*

Date of concluding the hearing : November 15<sup>th</sup>, 2018

Date of pronouncing the order : November 30<sup>th</sup>, 2018

**ORDER**

**Per J. Sudhakar Reddy, AM :-**

This appeal filed by the revenue is directed against the order of the Learned Commissioner of Income Tax -2, Kolkata, (hereinafter the "Ld.CIT(A)"), passed u/s. 250 of the Income Tax Act, 1961 (the 'Act'), dt. 24/08/2017, for the Assessment Year 2010-11, on the following grounds:-

1. *"Whether on the facts and in circumstances of the case, Ld.CIT(A) erred in deleting the disallowance of expense of Rs.1,44,061/- made to clubs for availing the club facilities and services, ignoring the decision of Hon'ble ITAT, Kolkata, in assessee's own case for A.Y. 1994-95 and 1998-99."*
2. *"Whether on the facts and in circumstances of the case, the Ld.CIT(A) has erred in deleting the addition of Rs.1,67,44,560/- made as notional interest on the loans given to certain companies/persons by the assessee."*
3. *"That it is humbly requested to set aside the order of Ld.CIT(A) and restore back the assessment order passed by the AO."*
4. *"That the appellant craves for leave to add, delete, amend or modify any ground before or at the time of appellate proceedings."*

2. The assessee is a company and is in the business of manufacturing and sale of fertilizer. He filed his return of income on 13/10/2010, declaring total income at Ni.

3. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:-

4. Ground No. 1, is on the disallowance of expenditure on clubs. The ld. CIT(A), at page 3 of his order by following the Tribunal's order in the assessee's own case for the Assessment Year 2010-11, held as follows:-

*"I have considered the submissions of the authorized representative of the appellant as well as the assessment order framed in the light of the materials available on record before the assessing officer during the assessment proceedings, The AR of the appellate has submitted that the entire expenses were allowed as expenses incurred wholly and exclusively for the purpose of business of the Appellant by the ITAT in the case of the assessee for the year 1999-2000, The copy of the said order is part of the paper book as submitted by the appellate. In view of above, by following the decision of ITAT in the assessee's own case, the AO is directed to delete the addition. **This ground of appeal is allowed.**"*

4.1. We find no infirmity in this finding of the ld. CIT(A) and uphold the same. Accordingly Ground No. 1 of the assessee is dismissed.

5. Ground No. 2 is on the issue of taxability of notional income on loans advanced. The ld. CIT(A) at page 5 of his order held as follows:-

*"I've considered the submissions of the authorized representative of the appellant as well as the assessment order framed in the light of the materials available on record before the assessing officer during the assessment proceedings. The AR of the appellate has submitted that in the assessment for the assessment year 2001-02, the learned Assessing Officer had disallowed similar amounts out of interest expenses incurred by the Appellant. The CIT (A) in his order had stated that such disallowance should not be made out of interest expenses, but the interest should be assessed on notional basis under "other source". On appeal before the ITAT, at the instance of the assessee, the decision of the CIT (A) was reversed and it was held that no amount can be treated as notional interest in a case where interest has not been charged by the assessee. Copy of the order dated 21-07-2005 of the ITAT "E" Bench, Kolkata in I.T.A.No. 9801Kol/05 is part of the paper book. In view*

*of above, by following the decision of ITAT in the assessee's own case, the AO is directed to delete the addition. This ground of appeal is allowed."*

5.1. We find that the issue is covered in favour of the assessee by the decision of the Jurisdictional Tribunal in the assessee's own case, as relied upon by the Id. CIT(A). We find no infirmity in this order of the Id. CIT(A) and uphold the same. Accordingly, Ground No. 2 of the revenue is dismissed.

6. Ground Nos. 3 & 4 are general in nature.

7. In the result, appeal of the revenue is dismissed.

***Kolkata, the 30<sup>th</sup> day of November, 2018.***

Sd/-  
**[Aby T. Varkey]**  
 Judicial Member  
 Dated : 30.11.2018  
 {SC SPS}

Sd/-  
**[J. Sudhakar Reddy]**  
 Accountant Member

*Copy of the order forwarded to:*

**1. M/s. Duncans Industries Ltd**  
**31, N.S. Road**  
**Duncans House**  
**Kolkata - 700 001**

**2. Assistant Commissioner of Income Tax, Circle-4(1), Kolkata**

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy  
 By order

Assistant Registrar  
 ITAT, Kolkata Benches