IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER

I.T.A. No.2094/Ahd/2014
(Assessment Year : 2008-09)

Ashapura Forwarders Pvt. Ltd., B-902, Sepath Hexa, Opp. Gujarat High Court, Sola, Ahmedabad – 380 060. [PAN No. AAATU 1288 N]	Vs.	ITO, Ward – 1(4) Ahmedabad.
(**Appellant**)	..	(**Respondent**)

Appellant by : Shri Chetan Agarwal, A.R.
Respondent by : Shri Lalit P Jain, Sr. D.R.

Date of Hearing 16/08/2018
Date of Pronouncement 12/11/2018

O R D E R

PER Ms. MADHUMITA ROY - JM:

The instant appeal has been filed before us by the assessee against the order dated 26.03.2014 passed by the Commissioner of Income Tax (Appeals)-II, Ahmedabad under section 143(3) of the Income Tax Act, 1961 arising out of the order dated 07.12.2010 for the Assessment Year 2009-10 with the following grounds :

"The learned CIT(A)-II, Ahmedabad has erred in law and on facts in -

1. *Confirming the disallowance of Rs.5,19,006/- made u/s 36(1)(iii) of the Act by the AO and by ignoring the written submission made before him on 6th March 2014.*
2. *Confirming the disallowance of Rs.6,12,996/- by treating the legitimate revenue expenditure as capital expenditure.*

The assessee craves leave to add, amend, delete or alter one or more grounds of appeal."

2. The brief fact leading to the case is this that the assessee company is running a business of clearing and forwarding agents. During the year under consideration the total income of the assessee was declared on 27.09.2008 is Rs.78,58,311/-. Upon scrutiny notice u/s 143(2) of the Income Tax Act was issued on 25.09.2009 followed by a questionnaire dated 06.01.2010 along with the notice u/s 142(1) of the Act. The assessee duly filed its audit report, audited balance sheet and profit and loss account. In the P&L Account, the assessee claimed an interest expenditure to the tune of Rs.38,23,512/-. It is also noticed from the balance sheet that total amount of loan fund is Rs.2,84,90,986/- and at the same time loans and advances is Rs.1,08,58,620/-. Sufficient reserves and surplus in the hands of the assessee is also evident in the balance sheet. It further reveals that assessee has advanced Rs.9,02,944/- to one M/s. Ameya Container Freight Station, a sister concern of the assessee company and also an amount of Rs.29,64,445/- to one of the directors of the company namely Shri Sujith C. Kurup. The assessee has not shown any interest income during the year under consideration. Show cause notice was issued upon the assessee directing him to explain as to why proportionate interest of interest free advances would not be disallowed.

The Learned Assessing Officer came to a conclusion that the assessee has diverted substantial portion of the borrowals towards interest free loans to directors and to the sister concern and thus the interest on such borrowals was not allowed as deduction. Since, the effective rate of interest paid by the assessee on interest bearing funds availed by the assessee works out to 13.4%, interest amount of Rs.5,19,006/- on the proportion of interest free advances was disallowed u/s 36(1)(iii) of the Act and added to the total income of the assessee.

3. In appeal, the Ld. CIT(A) confirmed the order passed by the Learned Assessing Officer reiterating his stand that no case was made out by the assessee as to the purpose to giving such huge amount to the director of the company and to the sister concern

without interest. Neither business interest is apparently visible in advancing such funds. Hence, the instant appeal before us.

4. At the time of the hearing of the appeal, the Learned Representative of the assessee argued before us that the interest free advances were given out of reserve and surplus and interest free funds available with the company and this interest expenses are to be allowed. He has relied upon the judgment passed by Jurisdictional High Court in the matter of CIT vs. Gujarat Foils Ltd. [2017] 79 taxmann.com 354 (Gujarat). On the contrary, the Learned Representative of the Department relies upon the order passed by the authorities below.

5. We have heard the Learned counsel appearing for the parties we have perused the relevant materials available on record. We find that no nexus has been established by the Learned Assessing Officer or by the Learned CIT(A) that the interest bearing fund was diverted for interest free advances. In the absence of such nexus established between the interest bearing loans and interest free advances it could be well presumed that it is an interest free fund that has been deployed for giving advances to the director and the sister concern since assessee is having sufficient interest free fund at that relevant point of time. We rely upon the judgment passed by the Jurisdictional High Court on this aspect relevant portion whereof is as follows:

> *"Where the assessee was having sufficient interest free funds available with it to lend interest free advances, the Tribunal was justified in deleting disallowance of interest under section 36(1)(iii).*
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> *Now so far as Tax Appeal No.963/2008 for the Assessment Year 2002-03 and Tax Appeal No. 964/2008 for the Assessment year 2003-04 with respect to disallowance of interest expenses claimed under Section 36(1)(iii) of the Act is concerned, the learned Tribunal has observed that the assessee was having interest free funds available with it. The learned Tribunal has observed that the advances were given by the assessee to various parties to the extent of Rs.2,62,48,341/- during the Financial Year 1996-97. The learned Tribunal has also found that even the assessee was having interest free funds to the extent of*

Rs.3,93,65,572/- as on 31/03/2002. It is required to be noted that in the earlier preceding year no disallowance was made out of the interest claimed by the assessee. Considering the aforesaid facts and circumstances of the case, the learned Tribunal has rightly deleted the disallowance on interest expenses. We are in complete agreement with the view taken by the learned Tribunal. Under the circumstances, the sole question of law in Tax Appeal Nos.963/2008 & 964/2008 are held against the revenue and in favour of the assessee."

Further that the judgment passed by the Hon'ble Apex Court in the matter of S. A. Builders Vs. CIT (SC) (2007) 288 ITR 1 dealing with the identical issue decided that the advances to the sister concern of the assessee if paid from non interest funds available with the assessee no disallowance of interest is warranted. The judgment was passed on the premise that the amount advanced to the associated company invariably was used for the business exigencies and both the entities are clearly associated one. Relying upon these two judgments, we are of the considered view that in the absence of the nexus established by the authorities below that the interest bearing fund was diverted for the interest free advances, the assessee is entitled to the claim of the deduction of interest expenditure. We therefore, delete the addition of Rs.5,19,006/- made u/s 36(1)(iii) of the Act by the authorities below. Thus, this ground of appeal made by the assessee is allowed.

6. In the next ground of appeal assessee has challenged the addition of Rs.6,12,996/- made by the authorities below treating as capital expenditure.

7. The case of the assessee is this due to termite, humidity and seepage, the assessee has carried out repair and renovation of office which was purchased in the year 2004. The assessee incurred and claimed expenditure of Rs.7,13,681/- as repair and renovation expenses in the profit and loss account. The AO treated the same as capital expenditure which was further upheld by the first appellate authority and granted relief limited to colour work expenses.

8. At the time of hearing of the instant appeal, the Learned Representative of the assessee submitted before us that the assessee incurred expenses towards changing of tiles, pipelines, drainage system of bathroom, electrification, changing of existing wood partition of cabins, changing of existing POP and colour work. He further added that during this repair and renovation, no new asset was created or brought into existence; existing damage, mutilated furniture and bathroom was renovated which, he argued, as revenue expenditure and thus allowable. He has relied upon the following judgment passed by the Jurisdictional High Court are as follows:

i. Indian Ginning & Pressing Co. Ltd. vs. CIT [2002] 125 Taxman 546 (Guj.)
ii. CIT vs. Porrits & Spencer (A) Ltd. [2002] 124 Taxman 155 (Punj & Har.)
iii. In the matter of ACIT vs Landmark Automobiles Pvt. Ltd. in ITA No.333/Ahd/2011, ITAT Ahmedabad Benches.

9. On the other hand, the Learned Representative of the Department relies upon the order passed by the authorities below on the premise that such expenditure is capital in nature and not eligible for deduction u/s 37(1) of the Act since, the nature of expenses incurred indicate that there was extensive repair of the office premises.

10. We have heard the Learned Counsel appearing for the parties, we have perused the relevant materials available on record. It appears, that the assessee during the course of assessment submitted the entire details of the repair works including the bills with breakups which is also part of the paper book before us. We have gone through the same, we do not find anything which shows that any addition or new asset has come into existence during renovation and repair works done by the assessee. The judgment passed by the Jurisdictional High Court in the matter of Indian Ginning & Pressing Co. Ltd. vs. CIT deals with the similar situation where expenditure incurred by the assessee on repairs of godown and office building was held to be capital in nature by Hon'ble Tribunal on ground that a new asset has came into existence and its use had also been changed from

godown to crèche for children of female workers was quashed and expenditure incurred was allowed as revenue expenditure. In that particular matter it was held that if the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. Since there is no addition or expansion of the profit making apparatus of the assessee was found the Hon'ble Jurisdictional High Court was pleased to allow such expenditure as revenue one. Similarly, in the case of Commissioner of Income Tax-vs-Porrits & Spencer (A) Ltd it was held by the Punjab and Haryana High Court that the expenditure incurred for renovation of factory and office premises is revenue expenditure since no new asset was credited nor any enduring benefit was obtained by the assessee and that the expenses incurred were in nature of current repairs. The same is rightly allowable. The judgments cited by the Representative of the Assessee in the matter of Landmark Automobiles Pvt. Ltd. vs. Department of Income Tax passed by the Co-ordinate Bench is also applicable to the instant case relevant portion whereof is as follows:

> *"10. We have heard the rival submissions and perused the orders of the lower authorities and material available on record. In the instant case, we find that no material was brought on record to show that any new asset was acquired by the assessee. We find that the Hon'ble Gujarat High Court the case of ACIT vs. Desai Bros., (1977) 108 ITR 14 (Guj.), held that even replacement of the petrol engine by a diesel engine would not bring into existence a new asset and was allowable as current repairs. Further, the Hon'ble Calcutta High Court in the case of CIT vs. Rameshwar Prasad Kejriwal & Sons (P.) Ltd., (1994) 74 taxman 124 (Cal.), held that replacement of parts of a machine, even if such replacement was more than cost of the machine itself, would qualify for deduction as revenue expenditure as no new asset or advantage of enduring benefit was brought into existence by any such expenditure.*
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> *11. We agree with the finding of the CIT(A) that after treating 55% of the expenditure of Rs.71,86,752/- as revenue, there was no justifiable basis for the Assessing Officer to arbitrarily treat 45% of the same expenditure as capital in nature. The expenditure incurred can be either capital or revenue but it cannot be*

partly Revenue and partly capital. In respect of balance amount of Rs.24,25,216/-, the CIT(A) found that the same was incurred for replacing the existing asset and not for acquiring any new asset. In absence of any material brought before us to show that any new asset which was not existing earlier was acquired by the assessee incurring the expenditure of Rs. Rs.24,25,216/-, we do not find any good reason to interfere with the order of the CIT(A) which is ITA No.333/Ahd/2011 Landmark Automobils Pvt Ltd For AY 2007-08 hereby confirmed and the ground of appeal of the Revenue is dismissed."

We find that the issue is squarely covered by the above judgments in favour of the assessee. In that view of the matter relying on the judgment discussed above we conclude that since no new asset has come into existence by such repair and renovation works done by the assessee, the expenditure is observed as revenue one and therefore allowable. We, therefore, delete the addition made by the authorities below and allow the appeal preferred by the assessee.

11. In the result, appeal of the assessee is allowed.

This Order pronounced in Open Court on 12/11/2018

Sd/-	Sd/-
(WASEEM AHMED)	(Ms. MADHUMITA ROY)
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 12/11/2018
Príti Yadav, Sr.PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-II, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
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