

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' NEW DELHI**

BEFORE

SHRI G.D. AGRAWAL, VICE PRESIDENT

AND

SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

**ITA No. 264/Del/2014
Assessment Year: 2010-11**

**All Grow Finance & Investment Pvt. Ltd., vs DCIT,
202, First Floor, Okhla Industrial Area, Circle-1(1),
Phase-III, New Delhi-110020 New Delhi.
(Appellant) (Respondent)**

**Department by: Shri Tarun Rohtagi, CA
Assessee by: Shri G. Johnson, Sr. DR**

**Date of hearing: 8.10.2018
Date of pronouncement : 27.12.2018**

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.:

This appeal has been preferred by the assessee against the order of the Ld. Commissioner of Income Tax (A)-IV, New Delhi dated 11.10.2013 for assessment year 2010-11 on the following grounds of appeal:-

"1. That on the facts and circumstances of the case the learned CIT (A) was not justified in sustaining the addition of Rs.43,48,483/- on account of notional interest income on the loan given to M/s Sietz Technologies India Pvt. Ltd.

1.1 That on the facts and in the circumstances of the case the Learned CIT (A) has erred in ignoring the restructuring agreement dated 30th April 2008 .

1.2 *That the Learned CIT (A) has failed to appreciate that the Loan given to M/s Sietz Technologies India Pvt. Ltd. was out of reserves and interest free funds of the appellant company.*

1.3 *That on the facts and in the circumstances of the case the Learned CIT (A) has erred in sustaining the levy of interest @ 15% in absence of material on record.*

1.4 *Without prejudice to the above grounds, interest if at all is to be levied the interest rate ought to have been levied at 6.75%.*

2. *That on the facts and in the circumstances of the case the learned CIT (A) was not justified in sustaining the disallowance of Rs. 4 Lakhs advance given for business purposes.*

2.1 *That the Learned CIT (A) ought to have allowed this expense u/s 37 of the Act.*

2.2 *That this amount has been subsequently recovered and taxed in AY 2013-14 .*

3. *That the learned CIT (A) has erred in law and on facts of the case in sustaining the disallowance of Rs.23,331/- of Prior Period Expenses .”*

2. Brief facts of the case are that the assessee is a non-banking finance company (NBFC) engaged in the business of banking, investment and broking in commodity exchange. The return for the captioned year was filed declaring a loss of Rs. 16,62,388/-. The assessee's case was selected for scrutiny. The assessment was completed u/s 143(3) of the Income Tax Act, 1961 (hereinafter called 'the Act') at Rs. 31,88,890/- after making an addition of Rs. 43,48,483/- on account of notional interest charged on loan given to M/s Seitz Technologies India Private

Limited. Disallowance of Rs. 79,464/- was also made on account of Security Transaction Tax (STT) and a further disallowance of Rs. 4 lakh was made on account of bad debts written off. A disallowance of Rs. 23,331/- was also made out of business promotion expenses. Aggrieved, the assessee approached the Ld. Commissioner of Income Tax (Appeals) challenging all the additions/disallowances but the assessee's appeal was dismissed by the Ld. Commissioner of Income Tax (Appeals) and now the assessee is before the ITAT challenging the upholding of addition of Rs. 43,48,483/- on account of notional interest income. The assessee is also in appeal against the sustenance of disallowance of Rs. 4 lakh given as advance which was subsequently written off as bad debts and also in appeal against the action of the Ld. Commissioner of Income Tax (Appeals) in sustaining the disallowance of Rs. 23,331/-.

3.0 At the outset, the Ld. AR submitted that the grounds relating to sustenance of disallowance of bad debts and sustenance of disallowance of business promotion expenses were not being pressed and the only effective ground being pressed was the sustenance of addition of Rs. 43,48,483/- on account of notional interest income.

3.1 The Ld. AR submitted that the assessee's main business is that of financing. It was submitted that on 8.11.2015, the assessee had given an interest bearing loan of Rs. 321 lakh to M/s Sietz Technologies India Pvt. Ltd. with the stipulation of monthly interest and the borrower had followed the stipulated terms in the initial year but, thereafter, from January 2008, the interest payments were stopped and the borrowers had approached the assessee for restructuring the loan in view of their adverse liquidity position. It was further submitted that the assessee immediately recalled the loan amount but in view of the financial position of the borrower, loan recovery was not possible. Thereafter, the assessee agreed to restructure the loan with fresh stipulation that interest was to be charged on the loan amount up to 31.03.2008 and out of the total outstanding amount as on 31.03.2008, the borrower was to repay Rs. 4,30,000 every month towards repayment of loan and no interest was to be charged on the loan amount w.e.f. 1.4.2008. It was submitted that in view of this loan restructuring agreement, no interest income was accounted for from 1.4.2008. He also drew our attention to the copy of loan restructuring agreement placed at pages 43 to 44 of the Paper Book filed by the assessee to support the contention

that interest had not been charged in view of the loan restructuring agreement. It was submitted that the addition on notional basis was liable to be deleted.

4.0 In response, the Ld. Sr. DR placed reliance on the concurrent findings of the lower authorities in this regard and also submitted that the transaction did not appear to be genuine as both the lender as well as the borrower company were sister concerns and under the same management. It was submitted that addition had been rightly made by the Assessing Officer in this regard.

5.0 We have heard the rival submissions and perused the material available on record. The facts of the case are not in dispute and the only issue for consideration before us is whether in view of the restructuring agreement, the assessee was justified in not charging interest on the outstanding loan amount w.e.f. 1.4.2008. The Assessing Officer, while making the disallowance, has rejected the assessee's submissions regarding restructuring of the loan agreement on the premise that the arrangement between the borrower and the assessee may be an afterthought to avoid charging of interest and reducing its taxable income. Similarly, the Ld. Commissioner of Income Tax (Appeals) also did

not accept the assessee's pleadings regarding restructuring of loan on the premise that the restructuring did not appear to be a genuine transaction. The Ld. Commissioner of Income Tax (Appeals) has also observed that the assessee should have opted for invoking the arbitration clause as specified in the original loan agreement rather than restructuring the loan. Thus, it is very much apparent that both the lower authorities have rejected the assessee's contention on mere surmises and suspicion of the impugned agreement being a colourable device without bringing on record any evidence which could disprove the assessee's claim in this regard. Thus, the fact remains that the impugned Loan Restructuring Agreement was not examined by the lower authorities and was rejected on a pre-conceived notion of it being a colourable device to avoid tax. We also note that the lower authorities have not considered and verified the assessee's contention that the impugned loan was given out of reserves and interest free funds of the assessee company. It is also seen that the Ld. CIT (Appeals) has, without assigning any cogent reasoning, summarily dismissed the assessee's alternate ground that interest may be levied @ 6.75%. Therefore, on an overall view of the facts of the case, we deem it appropriate to restore the

issue to the office of the Assessing Officer to adjudicate the issue afresh in accordance with law after duly considering the contents of the original loan agreement as well as the loan restructuring agreement. The assessee will be at liberty to file evidences before the AO in support of its claim. The Assessing Officer shall also duly consider the alternate argument of the assessee that an interest rate of 6.75% may be applied. The AO shall also afford proper opportunity to the assessee before adjudicating the issue. Thus, the related grounds are allowed for statistical purposes.

5.1 As ground nos. 2, 21, 2.2 and 3 have not been pressed the same are dismissed as not pressed.

6.0 In the final result, the appeal of the assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 27th December, 2018.

**Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT**

**Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: 27th DECEMBER, 2018
'GS'

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

By Order

ASSTT. REGISTRAR

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

