

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

श्री संजय गर्ग, न्यायिक सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA Nos. 768 to 770/CHD/2017

निर्धारण वर्ष / Assessment Years : 2011-12 to 2013-14

M/s Snowview Automobiles Pvt Ltd, Plot No. 26, Industrial Area, Phase 1, Chandigarh	बनाम	The ACIT, Circle 2(1), Chandigarh
स्थायी लेखा सं./PAN NO: AAHCS6610D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Sh. Parikshit Aggarwal, Advocate

राजस्व की ओर से/ Revenue by : Sh. Manjit Singh, Sr. DR

सुनवाई की तारीख/Date of Hearing : 19.12 .2018

उदघोषणा की तारीख/Date of Pronouncement : 19.12 . 2018

आदेश/Order

Per Sanjay Garg, Judicial Member:

The captioned appeals have been preferred by the assessee against the separate orders of the Commissioner of Income Tax (Appeals)-1, Chandigarh [hereinafter referred to as CIT(A)] dated 28.2.2017 relating to assessment years 2011-12, 2012-13 and 2013-14 respectively.

2. Since the issues involved in all the appeals are identical, hence, the same have been heard together and are being disposed of by this common order. First, we shall deal with the appeal of the assessee for assessment year 2013-14 in ITA No. 770Chd/2017, which is taken as lead case.

ITA No. 770/Chd/2017 (A.Y. 2013-14).

3. The assessee in this appeal has taken the following grounds of appeal:-

1. *That on the facts, circumstances and legal position of the case, the Worthy in Appeal No. 417/15—16 dated 28.02.2017 has erred in passing that order in contravention of the provisions of Section 250(6) of the Income Tax Act, 1961.*
2. *That on the facts, circumstances and legal position of the case, the Worthy CIT(A) was not justified in confirming addition to an extent of Rs. 15,52,376/- u/s 36(l)(iii) even when the whole of the addition on this account deserved to be deleted.*
3. *That on the facts, circumstances and legal position of the case, the Worthy CIT(A) was not justified in confirming the action to an extent of Rs. 40,73,739/-, on account of repair and maintenance claimed by the appellant as revenue expenses and held by the Ld. AO as capital in nature, even when whole of the addition on this account deserved to be deleted.*
4. *That on facts, circumstances and legal position of the case, the Worthy CIT(A) was highly unjustified in upholding the action of Ld. AO in respect of addition of Rs. 6,00,000- made u/s 68 on protective basis in the hands of the appellant on account of loan raised from Sh. Pawan Mittal (MD).*
5. *That the appellant craves leave for any addition, deletion or amendment in the grounds of appeal on or before the disposal of the same.*

4. **Ground Nos.1 & 5** are general in nature and does not require any specific adjudication.

5. **Ground No. 2:** Vide this ground, the assessee has agitated the confirmation of addition of Rs. 15,52,376/- made out of the interest

expenditure u/s 36(i) (iii) of the Income-tax Act, 1961 (in short 'the Act'). The Assessing officer noted that assessee had used interest bearing funds for making interest free loans and advances to other parties. He, therefore, made an addition of Rs. 35,60,646/- u/s 36(1)(iii) of the Act.

In appeal, the Ld. CIT(A) observed that the advances from the two sources viz. from the current account of the assessee company and from the cash book of the company cannot be said to be made from interest bearing funds, rather, from the own funds of the company. However, in respect of the advances from cash credit limit account, the Ld. CIT(A) observed that the assessee had paid interest on the amount withdrawn from the cash credit limit, hence, the interest bearing funds were used for making the advances. He, therefore, upheld the disallowance of Rs. 15,52,376/- out of the total disallowance made by the Assessing officer.

6. Before us, Ld. Counsel for the assessee submitted that after making advances from the cash credit limit account, the assessee got certain interest free funds, own funds, trading receipts which were got deposited in the cash credit limit, hence, it cannot be said that the assessee had used interest bearing funds.

7. The Ld. DR however, has relied upon the findings of the lower authorities.

8. We have considered the rival submissions. Since the assessee had withdrawn the funds from the cash credit limit which were admittedly interest bearing funds, hence, disallowance u/s 36(1)(iii) of the Act is attracted in this case. However, the contention of the assessee that the

assessee subsequently deposited the trading receipts / own funds into the cash credit limit has also force. In view of this, we direct the Assessing officer to calculate the interest u/s 36(1)(iii) of the Act from the date of withdrawal of the funds from the cash credit limit till the date of deposit of the interest free funds into the cash credit limit. This ground is accordingly partly allowed in favour of the assessee.

9. **Ground No.3:** Vide ground No.3, the assessee has agitated the action of the CIT(A) in confirming the disallowance of expenditure of Rs. 40,73,739/- incurred by the assessee on repair and maintenance.

10. The brief facts relating to the issue are that assessee is engaged in the running of dealership of Mahindra & Mahindra Ltd and deals in sales and servicing of the vehicles. The business is being run in leased premises. The assessee during the year claimed an expenditure of Rs. 57,78,253/- as repair and maintenance expenditure. However, the Assessing officer disallowed the same observing that the same was not a Revenue expenditure rather a capital expenditure of enduring benefit.

In appeal, the Ld. CIT(A) allowed a relief of Rs. 31,48,369/- observing that the expenditure incurred by the assessee on glass work, painting, electric fittings, sanitary fittings, gives the assessee benefit of enduring nature. However, he confirmed the addition of Rs. 40,73,739/- in respect of expenditure incurred on floor and wall tiles, false ceiling, aluminum partitioning etc. holding that the same would not come within the meaning of current repairs.

11. We have heard the rival contentions on the issue. As per the provisions of Section 30 of the Income Tax Act, where the premises is occupied by the assessee as a tenant, the rent paid for such premises and if the tenant has undertaken to bear the cost of repair and maintenance of the premises, the amount incurred on account of such repairs is allowable as business expenditure. However, if the premises is taken by the assessee otherwise than as a tenant, amount paid by him on account of current repairs of the premises is allowable expenditure. Admittedly, in this case the assessee is running a show room cum sales and service of Mahindra & Mahindra vehicles in leased premises. The assessee for business purposes got renovation of the premises, which apart from the replacement of glassware plant, electric fittings etc. also included change of floor and wall times, false ceiling, aluminum partitions etc. It is not a case of the Revenue authorities that the said expenditure was not incurred by the assessee or that the same was to be borne by the land lord.

In our view, the said repair and renovation carried out by the assessee did not give rise to a new capital asset, rather the same was carried out for the proper and smoothness of the business. In view of this, we do not find any justification on the part of the lower authorities in disallowing the said expenditure. We, therefore, direct the Assessing officer to allow the aforesaid expenditure on repair and maintenance as Revenue expenditure.

This ground of the appeal is accordingly allowed in favour of the assessee.

12. **Ground No.4** : The Ld. Counsel for the assessee has submitted that this ground is not pressed at this stage and the same is dismissed as 'not pressed.

In the result, the appeal of the assessee is treated as partly allowed.

ITA No. 769/Chd/2017 (A.Y. 2012-13).

13. In the appeal, the assessee has taken only one effective ground i.e. in relation to the disallowance of Rs. 4,24,540/- out of interest expenditure u/s 36(i)(iii) of the Act.

14. The facts and the issue involved are identical as taken by assessee in ground No.2 of the appeal bearing ITA No. 770/Chd/2017 and our findings arrived at, while adjudicating the said issue, will apply mutatis-mutandis to this ground also. The Assessing officer is accordingly directed to calculate the disallowance u/s 36(1)(iii) of the Act as par the directions given above.

This appeal of the assessee is treated as partly allowed.

ITA No. 768/Chd/2017 (A.Y. 2011-12):

In this appeal the assessee has taken four grounds of appeal.

16. **Ground Nos.1 & 4** are general in nature and does not require any specific adjudication.

17. **Ground No.2** : This ground is in relation to disallowance of Rs. 3,29,552/- made u/s 36(1)(iii) of the Act. In view of our findings given above while adjudicating ground No.2 of the appeal in ITA

No.770/Chd/2017, this issue is also decided accordingly and the Assessing officer is directed to calculate the disallowance u/s 36(1) (iii) of the Act as per the directions given above while deciding the identical issue vide ground No. 2 in ITA No. 770/Chd/2017.

18. Ground No.3 : Ground No.3 is relating to the disallowance of Rs. 8,35,743/- on account of repair and maintenance claimed by the assessee. This issue is identical to that taken by the assessee vide ground No.3 in ITA No. 770/Chd/2017. In view of our findings given above in relation to ground No.3, the decision rendered therein will apply mutatis-mutandis to this ground of appeal also.

In view of this, all the appeals of the assessee are treated as partly allowed.

Order pronounced in the Open Court on 19.12.2018

Sd/-
(अन्नपूर्णा गुप्ता / ANNAPURNA GUPTA)
लेखा सदस्य/ Accountant Member

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

Dated : 19.12. 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