

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "B" : DELHI

BEFORE SHRI BHAVNESH SAINI, J.M. AND SHRI O.P. KANT, A.M.

I.T.A.No.2266/Del./2015
Assessment Year 2011-2012

The DCIT, Rohtak Circle, Rohtak.	vs.	Shri Prem Kumar Gupta, Prop. M/s. Belco Pharma, 515, MIE, Bahadurgarh, Distt. Jhajjar. PAN ACRPG5722G
(Appellant)		(Respondent)

For Revenue :	Ms. Shaveta Nakra Dutta, Sr. DR
For Assessee :	Shri Navin Gupta, Advocate.

Date of Hearing :	03.01.2019
Date of Pronouncement :	07.01.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Revenue has been directed against the Order of the Ld. CIT(A), Rohtak, Dated 13.02.2015, for the A.Y. 2011-2012.

2. Ground Nos. 1 and 2 are as under :

- 1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law and in facts in deleting the addition amounting to Rs. 52,84,106/- made by A.O.*

on account of disallowance of additional depreciation on new plant & machinery.

2. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law and in facts in deleting the addition amounting to Rs. 39,63,080/- made by A.O. on account of disallowance of normal depreciation.

3. It is noted in the impugned Order that assessee had claimed additional depreciation on the assets purchased and put to use during the year under appeal. The details of the additional depreciation claimed is given in para-2 of the assessment order which is also reproduced in the impugned order which are in respect of plant and machinery, Air Conditioner, Generator Set, Fire Fighting Equipments, Laboratory Equipments, Water Treatment Plant totaling to Rs.52,84,106/-.The assessee had purchased machinery and put them to use immediate after purchase and copy of installation certificate was filed before A.O. But the A.O. disbelieved the same only on the reason that the same was issued by the Plant Manager of the assessee. When any machine is purchased the same is

installed under the supervision of Plant Manager, then how a third party can issue a Certificate of Installation ? The assessee produced copy of the account of the fixed assets along with copies of the bills for verification which made it clear that all the above assets are such for which no long process of installation is required. Further, there is no requirement of law that installation certificate has to be obtained before putting the machine to use. Now a days the machines are just like Table fans, just purchase and put them to use. The AO never required the assessee to prove further that machine was put to use before the close of the financial year. If the AO was not satisfied with the certificates filed by the assessee, he should have asked for the explanation. Further, the unreasonableness of the assessment order can be judged that depreciation and additional depreciation has been denied by the AO even on machines purchased before 30.09.2010. The addition in fixed assets before 30.09.2010 and after 30.09.2010 is clearly shown in the schedule of fixed assets attached with the balance sheet and filed before the A.O. Copies of the

account of fixed assets on which depreciation and additional depreciation have been claimed by the assessee are placed in the paper book. On going through the accounts of the fixed assets, it can be appreciable that most of the assets were purchased well before March 2011 and there was sufficient time for installation and putting them to use. The Ld. CIT(A) considering the explanation of assessee noted that the description of items as per list of the assets above shows that these are of such a nature as to be used automatically upon purchase and would not be of the kind that merits an installation certificate of a company. In any case, if the AO doubted the installation, he could have obtained the information from the suppliers, details of which were available with him. The Ld. CIT(A), therefore, held that no evidence has been brought on record to prove that the machines were not installed and put to use. The Order of the A.O. was accordingly set aside and depreciation and additional depreciation was allowed as per Law.

4. After considering the rival submissions, we do not find any merit in these grounds of departmental appeal. By

nature of the assets mentioned above, it clearly shows that these are of such a nature that these can be used even after the purchase. There is no need to get a certification of installation from third party particularly when Plant Manager of the assessee certified that installation have been done of the above assets in manufacturing plant. It, therefore, appears that A.O. without any justification denied depreciation and additional depreciation to the assessee. The Ld. CIT(A), therefore, rightly allowed the same in favour of the assessee. No interference is required. Ground Nos.1 and 2 of the appeal of Revenue are dismissed.

5. Ground No.3 is as under :

3. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law and in facts in deleting the addition amounting to Rs.8,97,905/- made by A.O. on account of disallowance of applying the provisions of Section 40A(2)(a) and charging of interest on the unsecured loans taken from the specified persons u/s 40A(2)(b) of the Income-tax Act, 1961.

5.1. On ground No.3, it is noted in the impugned Order that assessee had paid interest @ 15% per annum to the persons covered under section 40A(2)(b) of the I.T. Act. The interest paid to unsecured loans cannot be compared with the loan from banks. As the bank loans are fully secured, there is no security for unsecured loans taken from relatives. Further, there are no other formalities as in case of bank loans. The Ld. CIT(A) referred to decision of ITAT, Ahmedabad Bench in the case of Shri Hitesh Narendrabhai Shah (HUF) vs., ITO in ITA.No.2370/Ahd/ 2010 in which it was accepted the rate of interest of 15% paid to persons covered under section 40A(2)(b) of the I.T. Act, is reasonable. In an another decision of the ITAT Ahmedabad Bench in I.T.A.No.2245/AHD./2010 in the case of ACIT vs M/s. Raj Steel Industries as referred to in which interest paid at 18% was found justified. The Ld. CIT(A), therefore, found that interest paid on unsecured loans @ 15% p.a. is on much lower side. It was also noted that all the recipients of the interest are assessed to tax @ 30% and as such there

is no loss to the Revenue. The Ld. CIT(A), accordingly, deleted the addition.

6. Considering the rival submissions, we do not find any merit in this ground of appeal of Revenue. There is difference between loan taken from Banks and unsecured loans taken from the relatives. In the case of unsecured loans from the relatives, no formalities and bank guarantee shall have to be given. 15% interest paid is highly reasonable. The Ld. CIT(A) rightly appreciated that the Tribunal in other cases have allowed even much higher rate of interest paid to the relatives. This ground of appeal of Revenue has no merit and the same is accordingly dismissed.

7. Ground No.4 is as under :

“On the facts and circumstances of the case, the Ld. CIT(A) has erred in law and in facts in deleting the addition amounting to Rs.7,46,317/- made by A.O. on account of payments in violation of provisions of Section 40A(3) of the I.T. Act, 1961.”

8. The Ld. CIT(A) recorded the details of the expenses which have been disallowed by the A.O. under section 40A(3) of the I.T. Act. It was found that except two payments others were not in violation of Section 40A(3) of the I.T. Act. The details clearly shows that the amount paid on various accounts were less than limit provided under section 40A(3) of the I.T. Act. The Ld. CIT(A), therefore, correctly deleted the addition. In the absence of any material contrary to the findings of the Ld. CIT(A) on record, no interference is required in the matter. This ground of appeal of Revenue is dismissed.

9. In the result, appeal of the Department is dismissed.

Order pronounced in the open Court.

Sd/-
(O.P.KANT)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 07th January, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'B' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.