

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC', NEW DELHI
BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER

ITA No. 3220/Del/2018
Assessment Year: 2014-15

PREM CHAND GUPTA, PROP.,
ASSAM TRADING CO.,
SUBZI MANDI,
SONIPAT
HARYANA – 131001
(PAN: ADQPG0366F)

VS.

ITO, WARD-3,
SONEPAT

(APPELLANT)

(RESPONDENT)

Assessee by : Sh. Sushil Wadhwa, CA
Revenue by : Sh. SL Anuragi, Sr. DR.

ORDER

The Assessee has filed the Appeal against the Order dated 22.3.2018 of the Ld. CIT(A), Rohtak pertaining to assessment year 2014-15 on the following grounds:-

1. That on facts and in circumstances of the case the Ld. Commissioner of Income Tax (Appeals) Rohtak has erred in upholding the disallowance of proportionate interest of Rs 4,57,532/- out of total interest of Rs 12,31,796/- paid to Sonipat Urban Cooperative Bank on cash credit limit alleging that the appellant had not given the free advances for business purposes and also no benefit has been derived from this advances for business purposes without considering that the appellant had given

the non interest bearing loan/advances out of his own fund.

2. That on facts and in circumstances of the case the Ld. Commissioner of Income Tax (Appeals) Rohtak has erred in upholding the disallowance alleging that the appellant has not prepared separate account for bearing fund and non-bearing fund without considering the appellant submission that the non-interest bearing loan was given out of his own fund.
3. That on facts and in circumstances of the case the Ld. Commissioner of Income Tax (Appeals) Rohtak has erred in upholding the disallowance of Rs 32,313/- u/s 14A of the Income Tax Act read with rule 8D of Income Tax Rule 1962 alleging that no explanation was furnished as to why the interest expenses relating to the dividend income be not disallowed.
4. That on facts and in circumstances of the case the Ld. Commissioner of Income Tax (appeals) Rohtak has erred in upholding an adhoc addition of Rs 24061/- equivalent to 10% out of various expenses of Rs 2,40,610/-.
5. That the appellant take liberty to alter, amend, vary any Ground of Appeal before or at the time of hearing.

2. The brief facts of the case are that assessee filed his return of income on 27.11.2014, declaring taxable income of Rs.3,65,210/- through e-filing, for the AY 2014-15. The return of the assessee was

processed u/s. 143(1) of the Income Tax Act, 1961 (in short "Act"). The case of the assessee selected for scrutiny under CASS and accordingly, statutory notices u/s. 143(2) of the Act was issued on 28.8.2015. The Audited Balance sheet alongwith Trading / P&L account and other relevant documents were obtained during the course of assessment proceedings. Thereafter, notice u/s. 142(1)/ 143(2) alongwith detailed questionnaire issued and income of the assessee was assessed at Rs. 8,78,530/- by making various additions vide order dated 25.11.2016 passed u/s. 143(3) of the Act. Against the assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 22.3.2018 has partly allowed the appeal of the assessee. Aggrieved with the impugned order, assessee is in appeal before the Tribunal.

3. During the hearing, Ld. counsel for the assessee has stated that Ld. CIT(A) has wrongly sustained the disallowance of proportionate interest of Rs 4,57,532/- out of total interest of Rs 12,31,796/- paid to Sonipat Urban Cooperative Bank on cash credit limit alleging that the assessee had not given the free advances for business purposes and also no benefit has been derived from this advances for business purposes without considering that the appellant had given the non interest bearing loan/advances out of his own fund. It is further submitted that Ld. Commissioner of Income Tax (Appeals) Rohtak has wrongly confirmed the disallowance alleging that the assessee has not prepared separate account for bearing fund and non-bearing fund without considering the assessee submission that the non-interest bearing loan was given out of

his own fund. However, the assessee has used the interest free funds availed as unsecured loans from friends and associates to provide interest free loans and advances during the year, which did not warrant any addition u/s. 36(1)(iii) of the Act. He further stated that Ld. Commissioner of Income Tax (Appeals) has also wrongly upheld the disallowance of Rs 32,313/- u/s 14A of the Income Tax Act read with rule 8D of Income Tax Rule 1962 alleging that no explanation was furnished as to why the interest expenses relating to the dividend income be not disallowed and also erred in upholding an adhoc addition of Rs 24061/- equivalent to 10% out of various expenses of Rs 2,40,610/-. It was submitted that assessee's own funds at the beginning and at close year were more than the amount of interest free loans and investments. However, he submitted that both the lower authorities could not specify a single discrepancy in the vouchers other than stating a general statement, Therefore, the disallowance cannot stand scrutiny and was liable to be deleted. In support of his contention, he filed a Paper Book containing pages 1 to 53 and relied upon few cases on the decision where no disallowance in case of sufficient own funds and interest free funds i.e. Bright Enterprises vs. CIT ITA No. 224 of 2013 (P&H) decided on 24.7.2015; Woodman Trading Co. Pvt. Ltd. vs. ITO, (ITAT, Rajkot) ITA No. 552/2008 decided on 31.12.2010; Yogendra Khandelwal vs. ACIT ITA No. 906/2012 (ITA Jaipur) decided on 17.1.2018; CIT vs. Vijay Solvex Ltd., ITA No. 147 of 2004 (Raj.), decided on 10.12.2014; Kissan Fats Ltd. vs. DCIT, Ludhiana ITA No. 779 of 2016, ITAT, Chandigarh decided on

28.11.2016. On the addition u/s. 14A r/w Rule 8D in case of sufficient funds and interest free funds are available and where disallowance u/s. 14A r/w Rule 8D cannot be more than exempt income , he relied upon the case law of HDFC Bank Ltd. vs. DCIT, Bombay decided on 25.2.106; Bennet Coleman & Co. Ltd. vs. ACIT (ITAT, Mumbai) decided on 8.1.2018; Future Corporate Resources Ltd. vs. DCIT; ITA No. 4658 of 2015 decided on 26.7.2017; Pest Control India Pvt. Ltd. vs. DCIT, ITA No. 5048 of 2016 (ITAT, Mumbai) and on the addition of no adhoc disallowance is permissible, he relied upon the case law of Vijay Infrastructure Ltd. vs. ACIT, ITA No. 254 of 2015 (ITAT, Lucknow) decided on 30.10.2015. In view of above, he requested that additions in dispute may be deleted.

4. On the other hand, Ld. DR relied upon the order of the Ld. CIT(A) and stated that he has passed a well reasoned order which does not need any interference.

5. I have heard both the parties and perused the records especially the impugned order and the case laws cited by the Ld. CIT(A) on each issue therein. I find that assessee has not given interest free advances for business purpose, and that no benefit has been derived from this advance for business purpose and that assessee has not prepared separate account for use of interest bearing funds and non interest bearing funds. Hence, in my opinion, the addition of proportionate interest of Rs. 4,57,532/- out of total interest of Rs. 12,31,796/- was rightly sustained

by the Ld. CIT(A), which does not need any interference on my part, hence, I uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground raised by the Assessee.

5.1 As regards addition of Rs. 32,313/- u/s. 14A r/w rule 8D is concerned, I note that it was the assessee's explanation that Rs. 5,65,000/- was invested in the share of Sonepat Urban Cooperative Bank out of its own funds for getting the facility of cash credit, is not sufficient explanation to show that this investment was made out of non-interest bearing funds. As the AO was not satisfied with the working and explanation of the assessee, he has rightly calculated the disallowance in accordance with the provisions of Rule 8D of the I.T. Rules. Hence, the disallowance made was rightly sustained by the Ld. CIT(A), which does not need any interference on my part, hence, I uphold the action of the Ld. CIT(A) and reject the ground raised by the assessee.

5.2 Apropos addition of adhoc addition of Rs. 24,061/- equivalent to 10%, out of various expenses of Rs. 2,40,610/- is concerned, I find that AO has made reasonable disallowance of 10% expenditure incurred on staff welfare, misc. and vehicle expenses, because the vouchers were handmade and the expenditure could not be fully substantiated as required under the provisions of section 37(1) of the Act, hence, this addition was rightly sustained by the Ld. CIT(A), which does not need any interference on my part, therefore, I uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground raised by the Assessee. It is

also noted that the case laws cited by the Ld. counsel of the assessee on distinguished facts and do not support the assessee's claim. However, the case laws relied upon by the Ld. DR which are mentioned in the impugned order are applicable in the case of the assessee.

6. In the result, the Appeal of the Assessee is dismissed.

Order pronounced on 16-01-2019.

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date:16/01/2019

SRBhatnagar

Copy forwarded to: -

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

Assistant Registrar, ITAT, Delhi Benches