

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

**BEFORE
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA Nos. 5522,5523/DEL/2016
Assessment Years: 2012-13, 2013-14

Filatech Enterprises Pvt. Ltd. Unit No. 19, 1 st Floor, Anugusta Point, Golf Course Road, Gurgaon – 122002 PAN AACCN3164B	Vs.	ITO, Ward – 1(4) Gurgaon
(Appellant)		(Respondent)

Appellant by:	Shri Baldev Raj, CA		
Respondent by:	Shri S.L. Anuragi, Sr. DR		
Date of hearing:	12	11	2018
Date of pronouncement:	25	01	2019

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeals have been filed against separate order, dated 8.9.2016 for the assessment year 2012-13 for the quantum of assessment passed u/s 143(3); and order dated 5.9.2016 for the quantum of assessment passed u/s 143(3) for the Asst. Year 2013-14, passed by Ld. CIT (Appeals) Gurgaon.

2. In the appeal for the assessment year 2012-13, the assessee has challenged the disallowance of interest expenses of Rs. 8,47,136/-. The facts in brief qua the disallowance are that, the AO during the course of assessment proceedings noted that assessee has debited interest expenses and bank charges and bank interest of Rs. 3,46,179/-. The AO further noted that

assessee has made payment of Rs. 70,59,467/- to DLF for a purchase of residential flat. AO in his show cause notice required the assessee to explain as to why proportionate interest on payment made to DLF may not be disallowed on the ground that it is for non-business purpose. In response, the assessee submitted that payments to DLF were made out capital contribution and through profit generated by the assessee and such an advance was not given out of any interest bearing fund. However, AO rejected the assessee's contention and held that interest bearing fund of the assessee has been diverted for non business purpose and accordingly, he made disallowance of Rs. 8,47,136/- @ 12% on the amount of Rs. 70,59,467/- i.e., the amount given as advance by the assessee for purchase of flats.

3. Before the Ld. CIT(A), assessee apart from reiterating the same submission that the payment to DLF was made out of capital contribution and out of profit generated by the company, further submitted that the flat was being purchased for the business purpose and was acquired as a business asset for which it had not yet got the possession during the year under consideration. After getting the possession of the said flat, it was used as a guest house of the company. Ld. CIT(A) noted that assessee has one bank account which was a Cash Credit account and the payment to the DLF was made from the CC account only and at no point of time there was any credit balance. Ld. CIT(A), however did not go with the reasoning of the AO and instead held that, from the material placed on record it is quite evident that the flat was purchased for the business purpose of the assessee, but during the year the flat was not fully constructed and assessee did not had any possession and, therefore, interest on borrowed fund used for the purpose of

purchasing flat needs to be capitalized in terms of *proviso* to section 36(1)(iii), till the date flat was put to use. He concluded that the assessee has incurred interest expenditure on the funds used for payment of flat and interest paid thus needs to be capitalized and cannot be allowed in terms of *proviso* to section 36(1)(iii). In this manner, Ld. CIT(A) has confirmed the order of the AO on altogether different ground.

4. After hearing both the parties and on perusal of relevant material referred to at the time of hearing, I find that assessee had funds of Rs. 88,90,764/- from its cash credit account on hypothecation stock and receivables. In its balance sheet, it has shown share capital of Rs. 1,19,24,131/- and reserves and surplus of Rs. 46,76,247/- as on 31.3.2012. Before me, Ld. Counsel has shown that assessee had a capital of Rs. 44,80,900/- in the financial year 2008-09 and from that year assessee has started making the payment towards flat booking to DLF. The cumulative amount given by the assessee up till A.Y. 2012-13 was Rs. 70,59,467/-. In this year, assessee has only made payment of Rs. 21,17,092/-. From these details, the findings and observations of the AO cannot be sustained at all, because in this year assessee has not made payment of Rs. 70.59 lacs out of any interest bearing borrowed fund. Once assessee has surplus interest free fund in the form of share capital and reserves and surplus, then it cannot be presumed that any such investment must have been made from borrowed funds only. In any case the reasoning given by the AO has been completely set aside by the Ld. CIT(A), who all together has made the disallowance on different reasoning that the residential flat which was to be purchased was purely for the business purpose and the asset was not put to use in this year,

therefore, any such interest paid needs to be capitalised in view of *proviso* to 36(1) (iii). The relevant *proviso* reads as under: -

36(1) (iii)

*“the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession provided that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset for **“extension of existing business and profession”** whether capitalized in the books of account or not, for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction.”*

5. The aforesaid *proviso* puts a bar on allowability of deduction u/s 36(1)(iii) only when borrowed capital has been used for acquisition of asset for extension of existing business or profession. Here in this case there is no acquisition of asset for extension of any existing business or profession. Hence, no disallowance can be made in terms of *proviso* to section 36(1)(iii). Thus, the finding and reasoning given by the Ld. CIT(A) for upholding a disallowance cannot be upheld.

6. Before us, Ld. Counsel for the assessee has also pointed out that in none of the years, any disallowance of interest has been made on similar payment in A.Ys. 2013-14 or 2014-15 even when assessments were completed under scrutiny proceedings. Thus, when on similar advance outstanding in the balance sheet in the subsequent years no adverse view has been taken, then in this year also there could not be any disallowance. If we accept the contention of the Ld. CIT(A) that the advance has been given for

acquisition of business asset which was for the purpose of business, then same has to be allowed as deduction. In any case, as already held above, no disallowance can be made in terms of *proviso*, because the conditions laid down in said *proviso* are completely absent in the present case. Accordingly, the disallowance of Rs. 8,47,136/- is directed to be deleted.

7. In the Assessment Year 2013-14, assessee has challenged adhoc disallowances; of development expenses, staff welfare, postage, telephone & internet, vehicle running and maintenance and festival expenses. The assessee in its profit and loss account has debited following expenses: -

(i)	Staff Welfare	Rs. 1,92,906/-
(ii)	Postage, Telephone & Internet	Rs. 3,72,198/-
(iii)	Vehicle running & maintenance	Rs. 4,61,455/-
(iv)	Festival expenses	Rs. 5,436/-

		Rs.10,31,995/-

8. Ld. AO after calling for the details and assessee's explanation, held that personal use of such expenses cannot be ruled out and, therefore, in absence of any details and evidences, all these expenses cannot be held to be incurred for wholly and exclusively for the business of the assessee company. He thus disallowed 1/5th of these expenses on adhoc basis which worked out to Rs. 2,06,399/-. Ld. CIT(A) has reduced it to 1/6th.

9. After considering the relevant finding given in the impugned order as well as material referred to before us, I find that assessee before the AO and Ld. CIT(A) has submitted that all the books of

accounts and supporting vouchers were produced before the AO for verification during the assessment proceedings on 15.9.2015. Copies of ledger account of all the expenses were also furnished. AO has also raised query and made certain inquiry for some of the expenses which was explained to his satisfaction. Without pointing out any defect or without identifying any expense for non-business purpose, AO has simply made adhoc disallowance stating that personal element of personal use cannot be ruled out. Once assessee has given entire details, then in so far as expenses like staff welfare, postage, telephone & Internet, vehicle running & maintenance, festival expenses purely pertaining to the corporate office of the assessee cannot be held to be for personal use, especially in the case of the Private Limited Company. Unless there is some material or evidence that certain expenditure could be in the nature of personal expenses of directors, no disallowance can be made. Here no such thing has been pointed out by either of the authorities and therefore, adhoc disallowance on account of personal use in the case of the company cannot be sustained. Accordingly, the disallowance confirmed by the Ld. CIT(A) is directed to be deleted.

10. In the result both the appeals of the assessee are allowed.

Order pronounced in the open Court on 25th January, 2019.

sd/-

[AMIT SHUKLA]
JUDICIAL MEMBER

Dated: 25th January, 2019

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Copy forwarded to:

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

Assistant Registrar