

आयकर अपीलिय अधिकरण, पुणे न्यायपीठ “एक-सदस्य मामला” पुणे में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH “SMC”, PUNE**

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष  
**BEFORE SHRI D. KARUNAKARA RAO, AM**

आयकर अपील सं. / ITA No.1109/PUN/2018  
निर्धारण वर्ष / Assessment Year : 2014-15

Kiran Agritech Pvt. Ltd.,  
4/17/29, Near Water Tank,  
Old Mondha, Aurangabad.

PAN : AAECK4065A

.... अपीलार्थी/Appellant

Vs.

ACIT, Circle-1,  
Aurangabad.

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri M. K. Kulkarni  
प्रत्यर्थी की ओर से / Respondent by : Shri M. K. Verma

सुनवाई की तारीख / <b>Date of Hearing : 11.02.2019</b>	घोषणा की तारीख / <b>Date of Pronouncement: 01.03.2019</b>
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**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM :**

This appeal is filed by the assessee against the order of CIT(A)-1, Aurangabad dated 03.04.2018 for the Assessment Year 2014-15.

2. The grounds raised by the assessee are as under :-

“1) On the facts and circumstances of the case and in law the Ld. CIT(A) was not justified in confirming the assessment made by the A.O. making addition of Rs.8,86,050/- invoking the provisions of S.36(1)(iii) of the Act. The addition is not sustainable in law. The same be deleted.

2) On the facts and circumstances of the case and in law the Ld. CIT(A) was under bounden duty to consider the statutory presumption that once on the basis of final accounts duly audited the assessee shown availability of interest-free funds then statutory it has to be presumed that the interest-free advances were made out of interest-free funds any. In view of this statutory presumption the addition made of Rs.8,86,050/- is not sustainable. It be deleted.

3) On the facts and circumstances of the case and in law the decision of the Hon'ble Delhi High Court (supra) relied upon by the Ld. CIT(A) was decided on the facts of that case only. It cannot be relied as a “precedent” applicable to the facts of this case. The confirmed addition by Ld. CIT(A) is unsustainable. The same be deleted.

4) The appellant craves to leave, add/amend or alter any of the above grounds of appeal.”

3. Briefly stated the relevant facts include that the assessee is a private limited company engaged in the business of ginning, pressing of cotton and oil mill. The assessee filed the return of income declaring total income of Rs.64,81,899/-. At the end of the assessment, the Assessing Officer disallowed a sum of Rs.8,86,050/- invoking the provisions of section 36(1)(iii) of the Act on account of interest bearing fund for non-business purposes as advance given by the assessee to M/s Radhekiran Pulses Pvt. Ltd. amounting to Rs.98,45,000/- and added the same to the total income of the assessee. Aggrieved with this action of the Assessing Officer, the assessee carried the matter before the First Appellate Authority. The CIT(A) sustained the said addition as made by the Assessing Officer and dismissed the appeal of the assessee.

4. Aggrieved with the said decision of the CIT(A), the assessee is in further appeal before me with the above extracted grounds of appeal.

5. At the outset, ld. Counsel for the assessee submitted that this is a case of making addition of Rs.8,86,050/- invoking the provisions of section 36(1)(iii) of the Act on account of ad-hoc basis ignoring the fact of availability of sufficient interest-free funds. In this regard, ld. Counsel brought my attention to the availability of interest-free funds and interest-bearing funds tabulated in para 6.6 of the assessment order (Table). The ld. Counsel submitted that both the Assessing Officer and the CIT(A) ignored the fact of non-interest-bearing funds and secured loans to the tune of Rs.2.17 crores out of total unsecured loans of Rs.2.86 crores. Consequent to ignoring of this fact, the CIT(A) gave a wrong finding thereby held the inapplicability of the binding judgement of the Jurisdictional High Court in the case of CIT vs. Reliance Utilities and Power Ltd., 313 ITR 340.

For this purpose, ld. Counsel submitted that the matter may be remanded to the file of the CIT(A) for fresh adjudication.

6. On considering the above submission of the ld. Counsel for the assessee and after hearing the ld. DR for the Revenue, I am of the opinion, for this limited purpose, the matter should be remanded to the file of the CIT(A) for considering the availability of the interest-free funds of Rs.2.17 crores while adjudicating the issue in the remand proceedings. The CIT(A) shall grant a reasonable opportunity of being heard to the assessee. Therefore, the grounds raised by the assessee in this appeal are allowed for statistical purposes.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on this 01<sup>st</sup> day of March, 2019.

**Sd/-**  
**(D. KARUNAKARA RAO)**  
**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक Dated : 01<sup>st</sup> March, 2019.  
*Sujeet*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-1, Aurangabad;
4. The CCIT, Nashik;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "एक-सदस्य मामला" / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune