

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.4567/Del./2016
Assessment Year 2002-2003

M/s. D.D. Sales Corporation, F-1/9, Okhla Industrial Area, Phase-I, New Delhi – 020. PAN AAAFD1937B	vs.	The ACIT, Circle-22(1), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Manu Monga, Advocate.
For Revenue :	Shri S.L. Anuragi, Sr.D.R.

Date of Hearing :	26.02.2019
Date of Pronouncement :	05.03.2019

ORDER

This appeal by assessee has been directed against the order of Ld. CIT(A)- 23, New Delhi, dated 23rd June, 2014, for the assessment year 2002-2003, challenging the addition of Rs.2,10,838/- on account of notional interest charged on debit balances of partners of the assessee firm.

2. The A.O. noted that during the course of assessment proceedings, assessee was asked to clarify why interest has not been charged on the debit balances of the

partners while it had paid interest on the borrowed funds to the tune of Rs.4.58 lacs to the bank and Rs.31.94 lacs to others. As per partnership deed, there was a provision for payment of interest @ 18% on the credit balances, the assessee firm should have also charged interest on debit balances. The assessee was confronted with this issue and required to prove the nexus of funds with borrowed loans. The assessee has furnished the written reply, which was considered, but, not accepted by the A.O. The assessing officer keeping in view the fact that department has not accepted the order of the Ld. CIT(A) on this issue for the assessment year 2006 2007, made the addition of Rs.2,10,838/-. The Ld. CIT(A) noted that Counsel for Assessee argued that there was no nexus between the interest bearing funds of the partnership firm and debit balance in capital account of the partner. The Ld. CIT(A) after examining the record found that there is a debit balance in the account of the partner, therefore, there is a clear inference that interest bearing funds have been

utilised by the partner for personal purposes. Appeal of assessee was accordingly dismissed.

3. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that earlier this issue was set aside to the file of assessing officer by ITAT, Delhi, D-Bench in the case of same assessee vide order dated 25th June 2010, with a direction to the assessing officer to undertake the exercise for finding out whether any advance was given out of the borrowed funds to the partners and decide the matter afresh. He has submitted that assessee filed reply in PB-65, in which it was clearly demonstrated that interest bearing funds have not been withdrawn by the partners. He has submitted that in assessment year 2006-2007, the Departmental Appeal have been dismissed by ITAT Delhi B-Bench in the case of the assessee in ITA.No.3801 & 3802/Del./2012 vide order dated 9th January 2014. The findings of the Tribunal in para-8 on the identical issue reproduced as under :

“8. We have duly considered the rival contentions and gone through the record carefully. We find that in the paper book, assessee has filed copy of the balance sheet for assessment year 2006-07. It has filed copy of the capital account of all the three partners which are available on page Nos. 7 to 12 of the paper book. It has also filed copy of the partnership deed and compiled the details in tabular form exhibiting the opening debit balance, additions made by the partners in their capital accounts, share of profit for the year, amounts withdrawn during the year and ultimate balance. We have gone through these details. We find that at the end of the year, there is a credit balance in the accounts of two partners. The debit balance in the account of Shri Rajiv Gambhir available at the end of the year has also gone down. It suggests that during the year, no fresh loans have been taken by the partners. Apart from this aspect, we have also seen the submissions filed before the Learned CIT(Appeals) showing the

total interest bearing funds of the assessee at Rs.589,28,533 and ultimate utilization of funds at Rs.823,66,919 for the business purposes. The ultimate amounts utilized by the assessee toward acquisition of assets is much more than the interest bearing funds. It suggests that no interest bearing funds have been diverted for non-business purposes. Learned DR made a prayer that this should be sent to the Assessing Officer for verification but after looking to the findings of the Assessing Officer in assessment year 2002-03, where he did not even touch the explanation submitted by the assessee, we do not find any merit in her submissions because she is unable to point out the defects in the details placed on the record and how these details need further verification. Therefore, we do not find any infirmity in the findings of the Learned CIT(Appeals). This ground of appeal is rejected.”

4. On the other hand, Ld. D.R. relied upon the orders of the authorities below.

5. After considering the rival submissions, I am of the view that addition is wholly unjustified. The assessing officer noted in the order that the department has not accepted order of the Ld. CIT(A) on the same issue for assessment year 2006-2007 whereby similar addition have been deleted. The A.O, therefore, made similar addition against the assessee without giving any independent reasoning. The Departmental Appeal has however been dismissed by the Tribunal in assessment year 2006-2007 (supra), holding therein that *“the ultimate amounts utilised by the assessee towards acquisition of assets is more than the interest bearing funds. It suggests that no interest bearing funds have been diverted for non-business purposes.”* Since Departmental Appeal have been dismissed in assessment year 2006-2007, therefore, no addition could be made in assessment year under appeal, which was the sole basis for the assessing officer to make the addition. Further, the ITAT in first round of proceedings when remanding back the matter to the file of assessing officer has directed the assessing officer to undertake the exercise

of finding out whether any advance was given out of borrowed funds to the partners and to decide the issue afresh in accordance with Law. However, assessing officer had not undertaken any exercise whether any advance was given out of the borrowed funds to the partners. The A.O, thus, failed to prove any nexus between the debit balances in the accounts of the partner with the borrowed funds utilised by the assessee. Thus, the order of the A.O. cannot be sustained in law. I, accordingly, set-aside the Orders of the authorities below and delete the addition.

6. In the result, appeal of Assessee allowed.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 05th March, 2019

VBP/-

Copy to

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

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.