

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

ITA No.1337/Del/2015  
Asstt. Year: 2010-11

Ram Mehar Mann, C/o Kapil Goel Adv. F-26/124 Sector 7 Rohini Delhi – 110 085	Vs.	ACIT Circle 38 (1) New Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by:	Shri H.S. Hooda, Advocate Shri Pawan Attri, Advocate
Department by :	Shri Surender Pal, Sr. DR
Date of Hearing	18/02/2019
Date of pronouncement	01/03/2019

**ORDER**

**PER L. P. Sahu, A.M.**

This is an appeal filed by the assessee against the order of Ld. CIT(Appeals)-XX, New Delhi vide order dated 1.01.2015 pertaining to assessment year 2010-11 on the following grounds :

1. *That on the facts and in the circumstances of case and in law, the Ld. CIT-A erred in sustaining the disallowance of bank interest of Rs. 503,649/- against the material and explanation available on record.*

2. *That on the facts and in the circumstances of case and in law, the Ld CIT-A erred in sustaining the addition/ disallowance of stated interest others amounting to Rs. 856,075/- basis of which is not comprehensible from impugned assessment order.*

*Disallowances for SUKMA SONS & ASSOCIATES (Proprietary concern of assessee) Rs. 43,96,435*

3. *That on the facts and in the circumstances of case and in law, the Ld CIT-A erred in sustaining the disallowance of vehicle related expenses Rs. 95,375 on adhoc basis without pinpointing which expense is unvouched and for non business purpose.*

4. *That on the facts and in the circumstances of case and in law, the Ld CIT-A erred in sustaining the disallowance of genuine refundable advance from Mr Surjeet Chowdhary as "sum received without consideration" u/s 56 being against the plain letter of the law, amounting to Rs. 30,40,000 (refer SC .42 ITR Page1 good consideration versus inadequate consideration; 118 ITR 989 ; 113 ITR 537 as obligation is repay is valid and good consideration)*

5. *That on the facts and in the circumstances of case and in law, the Ld CIT-A erred in sustaining the disallowance of bank interest of Rs. 563,889/- against the material and explanation available on record.*

6. *That on the facts and in the circumstances of case and in law, the Ld. CIT-A erred in sustaining the addition/ disallowance of stated interest others amounting to Rs. 697,171/- basis of which is not comprehensible from impugned assessment order.*

*Non speaking order passed by Ld. CIT-A in appeal without considering paper book filed on records*

7. *That on the facts and in the circumstances of case and in law, the Ld. CIT-A erred in passing non speaking order bereft of valid reasoning without objectively considering available paper books and without complying natural justice principles."*

2. Brief facts of the case are that assessee filed return of income on 26.9.2010 declaring income of Rs. 47,73,697/- and showing agricultural income of Rs. 6,09,280/-. The case was selected for

scrutiny and statutory notices were issued to the assessee. The assessee is engaged in the business of labour contractor under the name and style M/s Sukhmaa Sons & Associates and M/s. Kay Cee Enterprises. During the course of scrutiny proceedings, Ld. AO noticed that the assessee has claimed bank interest of Rs. 5,03,649/- and Rs.5,63,889/- on loan taken from bank. On scrutiny of accounts it was informed by the AO that the assessee has given interest free loan to the tune of Rs. 4.52 crores and the own fund is shown only Rs. 2.83 crores and assessee has received unsecured loan of Rs. 1.17 crores. Similar situation existed in the last year and AO had disallowed the complete interest and most of the loans are carried forwarded from the last year. Therefore, it was observed that the loan has been granted for non-business purpose. Accordingly, interest payment of Rs. 5,03,649/- was disallowed.

3. Further on scrutiny of accounts the AO noticed from the profit and loss account of the assessee that assessee has debited as interest payment to others at Rs 8,56,075/- and Rs. 6,97,171/-. In this regard the assessee submitted that the interest payment has been made towards late payment of service tax and the payment details are as under :-

04.07.2009 : Rs. 3,17,184/- vide cheque no. 864868  
24.09.2009 : Rs. 2,60,140/- vide cheque no. 864984  
04.01.2010 : Rs. 2,78,751/- through E-banking

*Total* : Rs. 8,56,075/-

4. The AO noticed that the assessee did not consider the service tax as a part of the gross turnover and also not debited into the profit and loss account i.e. he is maintaining separate ledger account for the service tax. Accordingly, the AO disallowed it as wrongly claimed as a business expenditure for the year under consideration and disallowed to the entire interest amount as noted above.

5. The AO also noticed that assessee has debited vehicle related expenses into the profit and loss account which is as under :-

1. <i>Depreciation</i>	: Rs. 2,92,251
2. <i>Interest on car loan</i>	: Rs. 47,482/-
3. <i>Vehicle expenses</i>	: Rs. 50,210/-
4. <i>Vehicle Insurance</i>	: Rs. 57,580/-
5. <i>Vehicle Maintenance</i>	: Rs. 29,350/-
<i>TOTAL</i>	Rs. 4,76,873/-

6. The contention of the AO was that since the assessee is proprietor and he owned five vehicles. Therefore the personal use cannot be denied. But without specifying any personal expenditure. he disallowed lump sum 20% of the total expenditure to the tune of Rs. 95,375/-. The Ld. AO also noticed that assessee has taken loans and advances of Rs. 30.40 lacs from Shri Surjeet Choudhary. The assessee submitted that in support of the genuineness of the transaction in this regard the assessee submitted confirmation of the ledger account, copy of bank account and Income-tax return of the lender. From the income tax return it was noticed by the Income Tax Officer that Shri

Surjeet Choudhary is showing his income at Rs. 3,78,000/- and also noticed from the bank statement that one day before advancing loan, a sum of Rs. 30.50 lacs is credited in his bank account and subsequently the lender has issued cheque of Rs. 30,40,000/- to the assessee. Further the assessee submitted for proving the identity of creditworthiness of the creditor and genuineness of transaction as under :-

*“Mr. Surjeet Choudhary has received Rs. 30.50 lacs during the year from Mr. Manoj from sales consideration of land sales of Rs. 30.50 lacs which is during reflected in Bank Statement of Mr. Surjeet Choudhary. Please find enclosed confirmation and copy of ITR and Bank statement for submission.”*

7. From the above submissions the AO was not satisfied and he applied section 56 sub section 2 (vii) and accordingly added Rs. 30.40 lacs into the income of the assessee. Further the AO noticed from the documents submitted that the assessee has claimed interest expenses of Rs. 5,63,889/- on loans taken from bank but no any interest charge on loans and advances given to M/s. Kaycee Enterprises, Shanti Retreat Pvt. Ltd. M/s. Sukma Sons & Associates and M/s. Mansarover & The Shanti Retreat Pvt. Ltd.. It was noticed from the financial statement that there was no sufficient interest free funds available to be advanced to the parties. In addition to the above the assessee has made interest free advances to M/s. Kaycee Enterprises.

8. Feeling aggrieved from the above order the assessee appealed before Ld. CIT(A). The assessee also made detailed written submissions before him. Ld. CIT(A) after considering submissions of the assessee, upheld the action of the AO. Aggrieved from the order of the Ld. CIT(A) the assessee is in appeal before the ITAT.

9. Ld. AR reiterated the submissions made before the lower authorities. He has further submitted a paper book containing 136 pages and copy of documents pertaining to land sold by Shri Surjeet Choudhary and their bank statement. Ld. AR further submitted the assessee had sufficient interest free fund out of which the advances have been given. Therefore the lower authorities are not justified to make addition towards interest paid on bank loan. He further submitted that the service tax interest was paid on the additional demand raised by the service tax authority for the business expediency. Therefore it is allowable expenditure u/s 37. The service tax interest has never been collected from the payee and the assessee has a direct nexus with its business. Further in respect of vehicle running expenses, he submitted that the interest on vehicle loan, depreciation and insurance expenditure are in the nature of fixed expenditure, and the same cannot be disallowed on the basis of element of personal use as done by the AO.

10. On the other hand Ld. DR relied on the order of the lower authorities and he submitted that the assessee had no sufficient funds for advancing to others the assessee has taken loan from bank on which interest have been paid to the bank. The assessee was unable to prove their interest free funds for advancing the loans and in respect of service tax interest the service tax interest has been paid for the default made by the assessee. Had it been paid as per service tax law, the assessee would not liable for the service tax interest. Therefore it is a complete violation of the service tax provisions and therefore it is not a business expenditure. In respect of vehicle running expenditure, the lower authorities are justified to make disallowance to the extent of 20% for the personal use of the vehicles and in respect of advance taken from Shri Surjeet Choudhary the lower authorities are justified to make addition because the creditworthiness has not been proved by the assessee.

11. After hearing both the sides and perusing the entire material available on record and order of the authorities below we notice from the financial statements submitted by the assessee that assessee has advanced money to some parties interest free whereas the assessee has only internal capital of Rs. 2.83 crores which is less than the amount advanced interest free to the other parties. The assessee has not prepared consolidated financial statement also. Therefore the

contention of the assessee that he had sufficient interest free funds, cannot be accepted. The AO has also noticed that similar disallowance on the identical issue was also made in the preceding year. Therefore, in the interest of justice, the matter should go back to the AO to examine whether the assessee had sufficient own funds for giving interest free advances or not. The assessee is also directed to produce cash flow statement and fund flow statement etc. on the date of giving loans and advances to support his claim. Needless to say that the assessee shall be given opportunity of being heard accordingly ground No. 1 & 5 of the appeal of the assessee deserve to be partly allowed for statistical purpose.

12. In respect of issue regarding interest on service tax payment, it is seen that such interest has been paid by assessee on the demand of additional service tax raised by the competent authority. As per documents, it is clear that the assessee is a service provider and he has maintained separate ledger for the service tax received/ paid. The assessee is bound by the service tax law to make payment of service tax due. However, the assessee, having failed to comply with the statutory law, was required to pay further service tax along with interest. This lapse on the part of the assessee would not constitute the interest expenditure to have been incurred for the purpose of business, as the exchequer cannot suffer any loss for any failure on

the part of the assessee. The case laws relied upon by the assessee are not applicable in the peculiar facts and circumstances of this case. Therefore, grounds Nos. 2 & 6 of appeal are dismissed.

13. Further in respect of ground No. 3, we notice from the order of the AO that the AO has disallowed 20% on the vehicle related expenses which include depreciation, interest on car loan and vehicle insurance. We find much weight in the submission of the assessee that these are the fixed nature of the expenditure on the premise of their person use. Therefore 20% of expenditure disallowed by the AO on this score for personal use of the vehicles is not justified. As far as the disallowance of 20% out of vehicle expenses and out of their maintenance is concerned, such expenditure depend on running of vehicles and we find no justification to doubt the findings of the authorities below that personal use of vehicles cannot be ruled out. Moreover, the assessee has failed furnish any logbook or any other evidence to show that the vehicles were used solely for the business purpose. Therefore, disallowance of 20% out of such expenditure of Rs.50,210/- and Rs.29,310/- deserves to be sustained. Accordingly, ground No. 3 deserves to be partly allowed.

14. In respect of ground No. 4, we find that the assessee has taken advance of Rs. 30.40 lacs from Shri Surjeet Choudhary. From the documents filed, we notice that the lender had sold his land at a cost

of Rs. 30.50 lacs and the consideration had been credited in the bank account of the lender on 16.01.2010. Out of the above sale consideration, the lender Shri Surjeet Choudhary advanced Rs. 30,40,000/- to the assessee which is evident from the bank statement submitted by the assessee before us. The assessee has also file ITR of the lender alongwith sale deed of the property. The amount of Rs.30,40,000/- is also found reflected in the balance sheet of assessee's proprietary concer, M/s. Kaycee Enterprises under the head "unsecured loans".In presence of all these documentary evidences, the addition of Rs.30,40,000/- made by the authorities below u/s. 56 of the Act is not sustainable. Accordingly, ground No. 4 of appeal is fit to be allowed.

15. Ground No. 7 is general in nature and needs no specific adjudication in view of our above decision.

16. In the result appeal of the assesee is partly allowed.

Order pronounced in the open court on 01.03.2019.

sd/-

**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

sd/-

**(L.P. SAHU)**  
**ACCOUNTANT MEMBER**

Dated: 01/03/2019

***Veena***

Copy forwarded to

1. Applicant

2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi