

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

ITA No. 2284/Del/2018
Assessment Year: 2010-11

DASHMESH STEEL CENTRE,
MAIN ROAD,
GADARPUR,
UDHAM SINGH NAGAR,
(PAN:AAEFD5859L)

VS.

ACIT, HALDWANI
3RD FLOOR,
AAYAKAR BHAWAN,
CHORGALIA BYEPASS ROAD,
GOLAPAR, HADLWANI

(APPELLANT)

(RESPONDENT)

Assessee by : Sh. V.K. Tulsian, CA.
Revenue by : Sh. SL Anuragi, Sr. DR.

ORDER

The Assessee has filed the Appeal against the Order dated 9.1.2018 of the Ld. CIT(A), Haldwani pertaining to assessment year 2010-11 on the following grounds:-

1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in partly confirming the additions made by disallowing the notional interest of Rs. 19,95,638/-.
2. The appellant respectfully, submits as under:-

1. The Ld. CIT(A) has without going into facts has partly sustained the additions out of Rs. 19,95,638/- of notional interest on advance given for business exigencies and that the appellant is not in the business of money lending, which is contrary to facts and law.
2. The Ld. CIT(A) missed to note that the funds advanced was not given from cash credit account and that the funds are own funds of the appellant.
3. The notional interest disallowed by Ld. CIT(A) was true and legitimate
4. That the impugned order is bad in law and not in consonance with facts, and against the principles of natural justice.
5. Besides the above grounds the appellant craves leave to add, alter, amend, and / or to modify any grounds of appeal, if necessary.

2. The brief facts of the case are that assessee filed return of income on 27.9.2010 declaring total income at Rs. 6,08,991/- in the status of firm. Further the assessment was completed u/s. 143(3) of the Income

Tax Act, 1971 (in short "Act") on total income assessed at Rs. 721,050/- on 7.3.2013. The case of the assessee was selected for scrutiny for re-assessment. The reason for the belief that income has escaped assessment was that *"on perusal of ledger account of M/s Dashmesh Hypermart, Haldwani it came to the notice that the firm has made a total transaction of Rs. 3.45 Crave. Out of which only Rs. 41.10 Laks were truly business transaction. Purchase of Iron bars and the rest amount were business transactions through BOB and Kotak Mahenra accounts. Moreover, it is apparent from the leger account, thre were not business traction between the two parties from 27/08/2009 to 31/03/2010, however money/cash was being transferred into each other account during theis period. Thus, the assessee made payment (Advance) to the tune of Rs. 3.04 Crore through varion cheques to M/s Dashmesh Hypermart, Haldwani. Out of which M/s Dashmesh Hypermart, Haldwani returned Rs. 1.22 Crore, thus having a closing credit balance of Rs. 1.81 Crore. It was an interest free advance. Therefore, proportionate interest on this amount may be disallowed as the assessee firm paid interest @ 11% on the borrowed funds, Haldwani"*. Accordingly, a notice issued u/s 148 of the Income Tax Act, 1961 (in short "Act") on 22/03/2016 was issued and in response thereto, the assessee Vide his submission dated 10/05/2016 sought reasons for re-opening the case. The same was provided to the assessee vide letter dated 10/05/2016. Thereafter, notice u/s 143(2) of the Act was issued on 16/12/2016 and Notice u/s 142(1) was issued to the assessee on 04/08/2016. In response to the same, the

assessee attended the case on 06/12/2016. The case has been discussed in details with respect to disallowance of proportionate interest. The assessee orally explains that the assessee-firm had sufficient capital in its books. Out of which the advance was given to the said firm. However, the assessee-firm could not furnish any documentary evidence in support of its claim. Again, a notice u/s 142(1) of the Act dated 15/12/2016 requiring it to explain as to why proportionate interest may not be disallowed and added to the income assessed earlier. In response the assessee furnishes written submission and after considering the same and also after considering the reasons to believe, disallowed the proportionate interest at Rs. 19,95,638/- and added the same to the total income of the assessee and assessed the income of the assessee at Rs. 11,62,630/- u/s. 147/143(3) of the Act dated 23.12.2016. Aggrieved with above disallowance the assessee appealed before the Ld. CIT(A), who vide his impugned order dated 9.1.2018 has partly allowed the appeal of the assessee thereby directing the AO to recomputed the disallowance of interest. Against the impugned order dated 9.1.2018, assessee is in appeal before the Tribunal.

3. During the hearing, Ld. counsel for the assessee has stated that Ld. CIT(A) has wrongly partly confirmed the addition by disallowing the notional interest of Rs. 19,95,638/-. It was further submitted that the Ld. CIT(A) has without going into facts has partly sustained the additions out of Rs. 19,95,638/- of notional interest on advance given for business exigencies and that the assessee is not in the business of money lending,

which is contrary to facts and law. It was further submitted that CIT(A) missed to note that the funds advanced was not given from cash credit account and that the funds are own funds of the assessee. To support his contention, he filed a small paper book containing pages 1-13 in which he has attached the copy of written submission dated 03.1.2018 and copy of financial statements.

4. On the other hand, Ld. DR relied upon the orders of the authorities below and stated that they have passed well reasoned orders, which do not need any interference and needs to be upheld.

5. I have heard both the parties and perused the records especially the impugned order and the rival submissions, I note that the sole issue involved in this appeal is relating to disallowance of notional interest by the AO of Rs 19,95,638/- on interest free advance given by the Assessee to its sister concern M/s Dashmesh Steel Hypermart during the relevant period. It is further noted that the funds advances to M/s Dashmesh Steel Hypermart were out of the capital with the Assessee firm and not out of Cash credit A/c as the funds of Cash Credit A/c were already exhausted for business purposes in the form of stocks, advance to suppliers and sundry debtors. Further that the Assessee had availed cash credit facility long back and that the sums advanced were made during the relevant previous year as such there was no nexus between sums borrowed with funds advanced to M/s Dashmesh Steel Hypermart. It is also claimed the advance was given for business exigency i.e to avail a discount of 10% on

the purchases made from M/s Dashmesh Steel Hypermart and on total purchases of Rs. 41.10 lakh a discount of Rs.3,98,920.00 has been received. Thereafter, due to supply chain issues with M/s Essar Steel, the assessee was given to understand that discount further shall not be given by M/s Dashmesh Steel Hypermart, as such purchases were stopped. Further that a part of advance was returned back aggregating to Rs. 1.22 Crores. In this regard the Hon'ble Bombay High Court has held in the case of Reliance Utilities & Power Pvt. Ltd [2009 (1) TMI 4 that the disallowance out of interest expenditure is not called for when the assessee has got sufficient own funds. Further it was held that where the assessee has own funds as well as borrowed funds, a presumption can be made that advances given for non business purposes have been made out of own funds. A similar view has been held by the Hon'ble Supreme Court in Munjal Sales Corporation vs. CIT 298 ITR 298(SC). Therefore, considering the above decisions, the contention of the Assessee that no disallowance of interest was called for as it had non-interest bearing funds available in its capital account was not found to be justified by the Ld. CIT(A). However as pointed out by the AO, the Assessee had only funds to the extent of Rs. 1,02,54,062/- as on 31/03/2010 in the partner's Capital account, therefore only to this extent it can be considered that non-interest bearing funds were available, accordingly on balance funds (Rs 3,43,00,000/- less Rs 1,02,54,062/-) the disallowance of interest was valid. Therefore, the AO was rightly directed to recompute the disallowance of interest 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 grounds raised by the Assessee.

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

Order pronounced on 19-03-2019.

Sd/-

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

Date: 19/03/2019

SRBhatnagar

Copy forwarded to: -

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

By Order,

Assistant Registrar, ITAT, Delhi Benches