

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

[Before Sri J. Sudhakar Reddy, Accountant Member & Sri S.S. Viswanethra Ravi, Judicial Member]

**I.T.A. No. 433/Kol/2017
Assessment Year: 2012-13**

Special Steel & Wire Wings.....Appellant
C/o Sri Jitendra Kaushik, Advocate
19-D, Muktaram Babu Street
Kolkata - 700 007
[PAN : AAMFS 1817 P]

Deputy Commissioner of Income Tax, Circle - 36, Kolkata.....Respondent

Appearances by:

Shri S.M. Surana, Advocate & Nirmal Kaushik, FCA, appeared on behalf of the assessee.
Shri C.J. Singh, JCIT, Sr. D/R, appearing on behalf of the Revenue.

Date of concluding the hearing : February 7th, 2019
Date of pronouncing the order : March 29th, 2019

O R D E R

Per J. Sudhakar Reddy :-

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) - 10, Kolkata, (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dt. 09/01/2017, for the Assessment Year 2012-13.

2. The assessee is a company and is in the business of trading of iron and steel. It filed its return of income on 28/09/2012 disclosing total income of Rs.37,88,801/-. The assessment u/s 143(3) of the Act was completed by the Assessing Officer on 30/03/2015, determining the total income at Rs.45,51,281/- *inter alia* making additions on account of difference in credit balances, disallowance of interest claimed and addition to business profit. Aggrieved the assessee carried the matter in appeal without success.

2.1. Further aggrieved, the assessee is in appeal before us.

3. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:-

4. Ground No. 1 is dismissed as not pressed.

5. Ground No. 2 is against confirmation of an addition made by the Assessing Officer of Rs.1,04,429/- on account of difference in closing balance with the account of Steel Authority of India Ltd (SAIL). The assessee's case is that it purchased steel from SAIL. SAIL debited some extra amount in the earlier years to the account of the assessee and this debit of Rs.1,04,429/- was not accepted by the assessee and hence the difference. In our considered view, not accepting a debit note by the assessee from SAIL cannot be added as income of the assessee. If the assessee had accepted the debit note its expenditure would not have gone up and consequently the profits do not go down. Thus, we allow this ground of the assessee and delete this addition.

6. Ground No. 3 is on the issue of disallowance of interest. The Assessing Officer as well as the Id. CIT(A) have held that the assessee has taken loans by paying interest @ 15% and whereas it has charged interest of 12% on loans given by it. The difference of 3% was disallowed. The Id. CIT(A) at para 6 of his order page 17 concluded as follows:-

"6. I have carefully considered the action of the Ld AO in making the impugned disallowance of Rs.45,51,281/-on account of interest payments. From the reasons recorded by the Ld AO, it appears that the assessee has borrowed money at higher rates of interest while he has lent money to "connected" persons at lower rates of interest. The assessee has paid interest at 15%of the loans taken, whereas the Ld. AO has reasons out that on an average the assessee has given loans to members at 12%. In appeal, it is seen that the assessee has stated various things but has admitted that the interest rate while giving loans was 12.5 to 13.1 %, which certainly is lower that the interest rate paid by the assessee-appellant itself. There are several contentions given by the appellant, namely that all the loans have not been taken at 15% interest, and that the average rate of interest for taking the loans was the range of 12.5% to 13.1%. However, the Ld A.R for the appellant has not filed a single supporting document while saying so. In the absence of documents and precise breakup of the loans and the amounts taken from various persons, the claim of the appellant remains unjustified. It is seen that the AO's observations that the loans given by the assessee were from borrowed funds appears to be correct. In the circumstances, I

find myself in agreement with the Ld. AO, that the interest expenditure is not commensurate with the income earned on account of the same. I also agree with the Ld. AO that the interest paid on unsecured loan used for the purpose of loan and investment cannot be justified to be a business expenditure. I am also in agreement with the Ld. AO that the funds from unsecured loan have been used in investment not only in fixed deposits but also given to loan and advances, and that this indicates that the assessee claiming expenditures without justifying any business expediency. Moreover, it is also true that the maximum unsecured loan outstanding is taken from related parties, which is covered u/s 40A(2)(b) of the I T Act, 1961 and this is a self-imposed liability by the assessee, as has been pointed out by the Ld.AO. In the circumstances, I agree with the Ld. AO that a portion of the interest expenditure needs to be disallowed as not having been incurred for the purpose of business and the Ld. AO has quite rightly calculated the differential at 3%. The action of the Ld AO in disallowing expenditure worked out at 3 %, totaling RS.45,51,281/- is accordingly confirmed., and the ground taken by the appellant stands dismissed."

6.1. A perusal of the above demonstrates that the Assessing Officer has not accepted the claim of the assessee that it has not taken loans at the average rate of interest of 15% but has taken loans at an average rate of interest ranging from 12.5% to 13.1% and that it gave loans at the same percentage rate of 12.5% to 13/1%. The ld. CIT(A) did not accept this claim due to lack of evidence. He also referred to Section 40A(2) (b) of the Act and confirmed the disallowance.

6.2. The assessee's case is that

- a) All the loans except the loan given to a partner of the firm Shri Shailendra Khandelwal were given in the earlier years. The loan to Shri Shailendra Khandelwal was given during the year and interest at the rate of 15%.
- b) Fixed deposits etc. continue from earlier years.
- c) The unsecured loan increased by Rs.5,17,42,922/- during the year and corresponding closing stock increased by Rs.3,45,20,060/- during the year and liabilities got reduced by Rs.1,82,27,203/-
- d) The loan given to the partner Shri Shailendra Khandelwal, for whom interest @ 15% has been charged, was Rs.2,80,61,834/-. Hence the deployment of unsecured loans was **Rs.80,89,597/-**.
- e) There was no disallowance of any interest in the previous Assessment Years in the assessments framed u/s 143(3) of the Act.

f) The interest income in question has been assessed as business income by the Assessing Officer in the case of the assessee.

6.2. Thus, on these facts and circumstances, we are of the considered opinion that no disallowance is called for under the Act. The claim of the assessee that the average rate of interest paid on borrowings and the average rate of interest charged on loans advanced is the same, has been justified with facts and figures. This claim has not been negated by the revenue authorities. All the loans except to the partner are opening balances. No disallowance was made in the earlier year. On this factual matrix, we delete this disallowance and allow this ground of the assessee.

7. In the result, this appeal of the assessee is allowed in part.

Kolkata, the 29th day of March, 2019.

Sd/-
[S.S. Viswanethra Ravi]
Judicial Member

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Dated : 29.03.2019
{SC SPS}

Copy of the order forwarded to:
1. Special Steel & Wire Wings
C/o Sri Jitendra Kaushik, Advocate
19-D, Muktaram Babu Street
Kolkata - 700 007

2. Deputy Commissioner of Income Tax, Circle - 36, Kolkata

3. CIT(A)-
4. CIT- ,
5. CIT(DR), Kolkata Benches, Kolkata.

True copy
By order

Assistant Registrar
ITAT, Kolkata Benches

