

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'F' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI K.N. CHARY, JUDICIAL MEMBER

ITA No. 2670/DEL/2016
[Assessment Year: 2008-09]

Shri Pawan Kumar Malhotra
Prop. M/s Neumann Engineering Works
16/4, Mathura Road, Faridabad.

Vs.

The D.C.I.T.
Circle - 1
Faridabad

PAN : ABDPM 2836 N

[Appellant]

[Respondent]

Date of Hearing : 09.04.2019
Date of Pronouncement : 12.04.2019

Assessee by : Shri D.C. Garg, CA.
Revenue by : Smt. Ashima Neb, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

With this appeal the assessee has challenged the correctness of the order of the Commissioner of Income Tax [Appeals], Faridabad dated 07.01.2016 pertaining to assessment year 2008-09.

2. Vide Ground Nos. 1 to 4, the assessee has challenged the reopening of the assessment and vide Ground No. 5, the assessee has challenged the additions made on merits of the case.

3. The appeal is late by 51 dates. The assessee has filed an application for condonation of delay. A perusal of the same shows that the assessee was prevented by reasonable cause in not filing the appeal on time. Considering the miniscule delay in filing the appeal, the delay is condoned.

4. The representatives of both the sides were heard at length, the case records carefully perused.

5. Facts on record reveal that original return was filed on 23.09.2008 declaring an income of Rs. 4,92,817/-. Assessment was framed u/s 143(3) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act']. on total income of Rs. 64,33,270/- vide order dated 31.12.2010. Subsequently, a notice u/s 148 of the Act was issued and served upon the assessee and the reasons recorded for reopening the assessment read as under:

"Return declaring income of Rs.4,92,817/- was filed on 23.09.2008 which was processed u/s 143(1) on 31.03.2010. Assessment u/s 143(3) was completed at a total income of Rs.64,33,270/- vide order dated 31.12.2010. Subsequently, it has come to notice as under:-

On perusal of records shows that the assessee has raised secured as well as unsecured loans and is paying interest thereon. In the P&L account, the assessee has debited an amount of Rs.17,71,007/- as interest paid and Rs. 1,75,570/- as bank charges totaling to Rs.19,46,577/- as expense. The Schedule of 'Other advances' annexed to the balance sheet shows an amount of Rs.3,15,90,114/- outstanding as advance in the name of Pawan Malhotra loan account. The Schedule of capital account to the balance sheet shows the opening balance 01.04.2007 of Rs. 13,20,337/- profit of Rs.5,04,735/- and withdrawal Rs.12,79,780/- and the remaining balance in the capital account is only of Rs.5,45,292/-. This amount of Rs.3,15,90,114/- shown outstanding under the head other advances is not out of the funds of the assessee but out of the funds on which interest is being paid by the assessee and debited to the business. The provision of section 36(I)(iii) attracted to the case of the assessee and disallowance of interest was required in the case of the assessee in view of the provision of section 36(I)(iii) and in view of the case of Abhishek Industries. The interest @ 12% on the advance of Rs.3,15,90,114/- to H be calculated but restricted to the interest and bank charges debited to the P&L account by the assessee for the current financial year of Rs.19,46,577/ is required to be added to the total income of the assessee. Hence income of Rs.19,46,577/ has escaped assessment.

3. In view of above, I have reason to believe that income chargeable to tax amounting to ₹ 46,500/- and any other income which subsequently comes to notice has escaped assessment for the assessment year 2008-09. Accordingly, notice u/s 148 is being issued for the assessment year 2008-09.

5 Dated: 24.12.2012

(Tatung Padi, IRS)
Asstt. Commissioner of Income Tax,"

6. It is the say of the ld. AR that the reopening has been done on the basis of audit objection dated 03.05.2012. The ld. AR vehemently contended that since the reopening is done on the basis of audit objection, the same cannot be considered as new tangible material evidence and hence the ratio laid down by the Hon'ble Supreme Court in the case of Kelvinator of India Ltd 320 ITR 561 clearly apply. The ld. AR further contended that reopening is bad in law and the assessment based upon such notice of reopening deserves to be quashed.

7. We do not find any force in the contention of the ld. AR. It is true that some audit objections were made by the audit party. It is equally true that on 31.01.2013 the CIT(Audit)

dropped the audit objections. It appears that the reopening has been done for the reasons similar to the reasons raised by the audit party but it cannot be stated that the reopening is based upon the audit objection as the audit objections were dropped by the CIT(Adit) vide order dated 31.01.2013.

8. A perusal of the reasons recorded for the reopening of the assessment clearly shows that the Assessing Officer has independently examined the records and after applying his mind, came to the conclusion that the interest claimed by the assessee has to be disallowed because the assessee has given interest free advances. In our considered opinion,, the reopening is valid in law and accordingly, Ground Nos. 1 to 4 are dismissed.

9. Coming to the merits of the case, we find that the assessee has debited interest of Rs. 17,71,007/- in the profit and loss account on secured and unsecured loans. We find that under the Schedule "Other advances" Rs. 3.15 crores was shown as outstanding in the name of Shri Pawan Kumar Malhotra on the basis of which the Assessing Officer formed

an opinion that this advance has been made out of borrowed capital on which the assessee has paid interest and therefore, the interest debited in the profit and loss account should be disallowed.

10. On a perusal of the record, we find that interest has been paid as under:

1	BANK INTEREST	1363982
2	INTEREST ON UNSECURED LOANS FROM	405000
3	INTEREST ON EXCISE DUTY PAYABLE	2026
	TOTAL	1771008

DETAILS OF INTEREST ON UNSECURED LOANS FROM OTHERS

S.NO.	NAME	AMOUNT	TDS
1	V.P. GUPTA	20000	2266
2	LEENA GUPTA	24000	2719
3	MIANOJ GUPTA	35500	4022
4	SHALU GUPTA	11834	1341
5	ANJANA GUPTA	18334	2077
6	NEETU GUPTA	22000	2493
7	D.V. GOEL	30000	3399
8	SANJAY KUMAR GUPTA	33802	3830
9	GIRRAJ PRASAD	33802	3830
10	PAWAN TRADERS	171228	19400
	TOTAL	400500	45377

11. A further break up of bank interest shows:

- | | | |
|---|---|----------------|
| (i) interest on car loan | - | Rs. 53,750/- |
| (ii) interest on bill discount | - | Rs. 3,77,420/- |
| (iii) interest on loan against property | - | Rs. 9,36,994/- |

12. It can also be seen from the details of interest that the interest on Excise Duty payable deserves to be excluded and so also the bank interest to the extent of Rs. 13,63,982/- as the same was paid on specific purpose. This leaves to the balance of other loans amounting to Rs. 4,00,500/-. In our considered opinion, interest that needs to be disallowed should be to the tune of Rs. 4,00,500/-.

13. Though the ld. DR had vehemently stated that the entire interest payment has to be disallowed, but we do not find any force in the contention of the ld. DR. as the loan taken for property, car loan and bill discounting cannot be considered as loan for diversion of funds. Considering the facts of the case in totality, we direct the Assessing Officer to restrict the disallowance to Rs. 4,00,500/-.

14. In the result, the appeal filed by the assessee in ITA No. 2670/DEL/2016 is partly allowed.

The order is pronounced in the open court on 12.04.2019.

Sd/-

[K.N. CHARY]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 12th April, 2019.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	