

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, "ए" चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH, 'A', CHANDIGARH

श्री एन. के. सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य  
BEFORE SHRI N.K. SAINI, VICE PRESIDENT & SHRI SANJAY GARG,  
JUDICIAL MEMBER

आयकर अपील सं./ ITA Nos. 1450 & 1451/CHD/2018

निर्धारण वर्ष / Assessment Years : 2013-14 & 2014-15

M/s IOL Chemicals and Pharmaceuticals Ltd., 85, Industrial Area-A, Ludhiana	Vs. बनाम	The ACIT, Circle 6, Ludhiana
स्थायी लेखा सं./PAN NO: AABCI 1842A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Sh. Ashwani Kumar, CA &  
Shri Aditya Kumar, CA  
राजस्व की ओर से/ Revenue by : Sh. Rohit Mehra, Sr. DR

सुनवाई की तारीख/Date of Hearing : 10.04.2019  
उद्घोषणा की तारीख/Date of Pronouncement : .04.2019

आदेश/Order

**Per Sanjay Garg, Judicial Member:**

The present appeals for different assessment years have been preferred by the assessee against the separate orders dated 14.9.2018 of the Commissioner of Income Tax (Appeals)-3, Ludhiana [hereinafter referred to as CIT(A)].

2. First we take up assessee's appeal in ITA No.1450/Chd/2018 for assessment year 2013-14.

3. The sole ground taken by the assessee in this appeal is regarding the action of the Ld. CIT(A) in upholding the disallowance of a sum of ₹ 29,10,663/- out of interest account made by the Assessing officer u/s 36(1)(iii) of the Income-tax Act, 1961 (in short 'the Act').

4. The brief facts relating to the issue are that during the course of assessment proceedings, the Assessing officer found that the assessee had shown capital work in progress to the extent of ₹ 31,50,70,871/-. He observed that the assessee had made the payment of capital advance and investment for construction of building out of borrowed funds which was required to be capitalized up to the end of the financial year. The assessee submitted that the interest on term loan taken for the purchase of machinery had been duly capitalized and that the funds used for building were out of own funds / interest free funds available with the assessee. However, the Assessing officer observed that the entire amount of building construction and machinery installation and capital advance was much more than the term loan utilized. In the absence of any specific details, the Assessing officer worked out the notional interest expenditure which was required to be capitalized u/s s 36(1)(iii) of the Act and added the same to the income of the assessee.

5. Being aggrieved by the order of the Assessing officer, the assessee preferred appeal before the Ld. CIT(A) but remained unsuccessful.

6. Before us, Ld. Counsel for the assessee has submitted that the term loans were taken for specific purposes and the term loans taken for

machinery were duly capitalized till the machinery was put to use. That there was no other borrowed funds with the assessee. That the source of funds for the building was out of the interest free funds available with the assessee out of sale proceeds of the year. That the assessee had capitalized the interest of ₹ 1,08,92,663/- during the year. That all the details of the capital work-in-progress, the funds used and the source of the funds were furnished but lower authorities have failed to properly appreciate the details submitted by the assessee. The Ld. counsel has also submitted that the lower authorities have also failed to consider the proposition of law laid down by the Hon'ble Supreme Court in the case of 'CIT (LTU) Vs. Reliance Industries Ltd.' [2010] 410 ITR 466 (SC), wherein, the Hon'ble Supreme Court has again confirmed the proposition of law that if the own funds / interest free funds are available with the assessee to meet the investment, presumption will be that the assessee had used its own / interest free funds for the said investment.

7. The Ld. DR, on the other hand, has relied upon the findings of the lower authorities.

8. Considering the above submissions of the assessee, in our view, the matter is required to be restored to the file of the Assessing officer to duly consider the aforesaid contention of the assessee, examine the details of the finances available with the assessee vis-a-vis amount capitalized by the assessee and decide the issue afresh in the light of the decision of the Hon'ble Supreme Court in the case of 'CIT (LTU) Vs. Reliance Industries Ltd.' (supra). The orders of the lower authorities are set aside and the

matter is remanded to the Assessing officer to decide the issue afresh as per the observations made above.

In the result, the appeal of the assessee is treated as allowed for statistical purposes.

**ITA No. 1451/Chd/2018**

9. The assessee in this appeal has raised the following grounds of appeal:

1. *That order passed u/s 250(6) of the Income-tax Act, 1961 (in short 'the Act') by the Ld. CIT(A)-3, Ludhiana is against law and facts on the file in as much as she was not justified to arbitrarily uphold the action of the Ld. Assessing officer in disallowing a sum of ₹ 4,86,491/- out of interest account.*
2. *That Ld. CIT(A) was further not justified to arbitrarily uphold the disallowance of ₹ 3,39,385/- out of Diwali expenses, gardening expenses, printing & Stationery expenses and website promotion charges.*

10. **Ground No.1:** Vide ground No.1, the assessee has agitated the action of the Ld. CIT(A) in upholding the disallowance of a sum of ₹ 4,86,491/- made by the Assessing officer out of the interest account under the provisions of section 36(i)(ii) of the Act.

11. During the assessment proceedings, the Assessing officer observed that the assessee had given working capital advance of ₹ 84,60,720/- out of borrowed funds which were relatable to work in progress. Since the assets were not put to use, the Assessing officer calculated the disallowance of interest by invoking the provisions of section 36(1)(iii) of the Act and

worked out the notional interest expenditure of ₹ 4,86,491/- and added back the same to the total income of the assessee.

12. Being aggrieved by the above order of the Assessing officer, the assessee preferred appeal before the Ld. CIT(A). It was submitted before the Ld. CIT(A) that the own / interest free funds of the assessee were sufficient to meet the investment / interest free advances / capital work in progress, made by the assessee, however, the Ld. CIT(A) held that since the funds used by the assessee were out of mixed funds, hence, the provisions of sec 36(1) (iii) of the Act have been rightly invoked by the Assessing officer.

13. Before us, the Ld. Counsel for the assessee has submitted that the assessee was possessed of sufficient own funds to meet the investments / capital advances. That the assessee company during the year raised funds by way of share capital to the tune of ₹ 37.79 crores which were credited to its cash credit account /current account. That the sale proceeds of the assessee company were also credited to these accounts and that these funds have been used in making the capital advance in question. Moreover, the funds utilized were out of current account which was interest free funds. That even otherwise the issue was squarely covered by the decision of the Hon'ble Supreme Court in the case of 'CIT (LTU) Vs. Reliance Industries Ltd.' [2010] (supra).

14. The Ld. DR could not rebut the aforesaid facts that the assessee was possessed of own sufficient / interest free funds available with it to meet the capital advances in question.

15. We find that the issue is squarely covered by the decision of the Hon'ble Supreme court in the case of 'CIT (LTU) Vs. Reliance Industries Ltd.' (supra). We therefore, do not find any justification on the part of the lower authorities in making the impugned disallowance. The same is ordered to be deleted.

This issue is decided in favour of the assessee.

16. **Ground No.2:** Vide this ground, the assessee has agitated the action of the CIT(A) in confirming the disallowance of ₹ 3,39,385/- as against the disallowance of ₹ 3,77,055/- made by the Assessing officer. The Assessing officer made the disallowance of ₹ 3,77,055/- out of the Diwali Expenses, Gardening expenses, Printing & Stationery and website promotion expenses on the ground that the same were not properly vouched.

17. Before the Ld. CIT(A), the assessee submitted that most of the expenses incurred by the assessee were by way of account payee cheques / bills. As in case of Diwali expenses, out of total expenses of ₹ 4,27,541/-, a single bill amount of ₹ 3,75,000/- was paid through cheque. Likewise, the expenses on website promotion, most of the debits are out of the last years prepaid expenditure carried over to the year under consideration and that no cash expenditure were incurred during the year. That similar was the position of disallowance made out of other two expenditure i.e. printing & stationary and gardening expenses. However, the Ld. CIT(A) gave part

relief to the assessee and confirmed the remaining expenditure for want of proper vouchers.

15. We have considered the rival submission on this issue. Considering the nature of the expenditure i.e. as 'Diwali expenses, gardening expenses, printing and stationary and website promotion expenditure' incurred which are usually incurred in day to day business activity and also considering the smallness of the amount and further submissions of the assessee that most of the expenditure were paid through account payee cheques, we do not find any justification on the part of the lower authorities in making the disallowance in respect of the aforesaid expenditure. The disallowances made by the lower authorities on this issue are therefore, ordered to be deleted.

In the result, this appeal of the assessee is treated as allowed.

In the result, the appeal of the assessee for the assessment year 2013-14 is treated as allowed for statistical purposes and appeal for the assessment year 2014-15 is hereby allowed.

Order pronounced in the Open Court on 22.04.2019

Sd/-  
(एन. के. सैनी / N.K. SAINI)  
उपाध्यक्ष / Vice President  
Dated : 22. 04.2019  
"आर.के."

Sd/-  
(संजय गर्ग / SANJAY GARG)  
न्यायिक सदस्य/ Judicial Member

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar