

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

**BEFORE SH. J.SUDHAKAR REDDY, ACCOUNTANT MEMBER &
SH.S.S.VISWANETHRA RAVI, JUDICIAL MEMBER**

**ITA No.1411/KOL/2017
(ASSESSMENT YEAR-2014-15)**

ACIT, Circle-35, Kolkata-700107.	vs	M/s. Kwality Steel Processors, 4, India Exchange Place, 2 nd Floor, Kolkata-700001. PAN-AAEFK2197G
(Appellant)		(Respondent)
Appellant by		Sh.C.J.Singh, JCIT Sr.DR
Respondent by		Sh. Miraj D.Shah, FCA
Date of Hearing		05.02.2019
Date of Pronouncement		03.05.2019

ORDER

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

This appeal filed by the Revenue against the order dated 27.03.2017 passed by CIT(A)-10, Kolkata for AY 2014-15.

2. Ground No.1 raised by the Revenue questioning the action of CIT(A) in deleting the addition made on account of diversion of interest bearing fund for giving interest free advance.

3. Heard both parties and perused the materials available on record. During the course of assessment proceedings, on verification of balance sheet and ledger copies, the AO found that the assessee advanced interest free funds to two entities i.e. SBIW Steel Pvt. Ltd. and Shree Bishandas Iron Works to the extent of Rs.7,96,74,518/-. In explanation, the assessee stated that M/s. SBIW Steel Pvt. Ltd. and Shree Bishandas Iron Works are associate concerns and the assessee has substantial transactions with both the concerns for supply of goods and reimbursement of expenses in subsequent assessment proceedings. The assessee is engaged in similar line of business of iron and

steel and it has the current account maintained with both the concerns above for supply of goods and services. The assessee filed supporting evidences like sub-accounts to show that they have supplied material in the assessment year and subsequent year. It is observed that the contention of the assessee before the AO was that the alleged interest free fund was trade advance for commercial expediency. However, the AO considering the loan availed by the assessee from bank and interest paid thereon to the bank as well as other parties on unsecured loans calculated the interest @ 9% on the alleged interest free loan to the above said two parties of Rs.71,70,707/- was added to the total income of the assessee.

4. Before the CIT(A), it was reiterated the same submissions as made before the AO. The CIT(A) examined the record and found satisfied with the arguments of the assessee. Further, he found that the immediate preceding assessment proceedings for Ay 2012-13 & 2013-14, no objection was raised by the AO in respect of alleged interest free loans and the CIT(A) accepted the submissions of the assessee and held that it was a trade account with the said both concerns on account of pure commercial expediency and the following the principal laid down by the Hon'ble Supreme Court in the case of *S.A. Builders Ltd. [2007] 288 ITR 01 (SC)* and also in the case of *S.P. Jaiswal Estates Pvt.Ltd. reported in 147 TTJ 649 (Kol. Trib.) (TM)* of the Kolkata Benches deleted the addition made on account of interest free loans for the reasons stated herein under:-

7. *“Overall in view of the facts and circumstances, as emanating from the case, I find that the arguments and reasoning of the appellant / Ld A.R find favour with most of the Hon'ble Courts and more specifically with the judgments emanating from the Jurisdictional ITAT Kolkata Bench 'A' in the case S.P. Jaiswal Estates (P.) Ltd. vs Assistant Commissioner of Income-tax, Central Circle IV, Kolkata[2012] 147 TTJ 649(Kolkata-Trib.)(TM), also reported in [2013] taxmann.com 221(Kolkata -Trib) (TM). The haed motes are as under*

IT : Where profit earned by assessee before depreciation was more than total Interest free advance given to its subsidiary and group companies, it would not be said that same were given out of interest bearing funds available to It, and interest on borrowings would not be disallowed on account of said interest free advances made

[2013] 29 taxmann.com 221 (Kolkata - Trib.) (TM)
IN THE ITAT KOLKATA BENCH 'A' (THIRD MEMBER)
S.P. Jaiswal Estates (P.) Ltd.v.
Assistant Commissioner of Income-tax, Central Circle IV, Kolkata*
PRAMOD KUMAR, ACCOUNTANT MEMBER (AS A THIRD MEMBER)
MAHAVIR SINGH, JUDICIAL MEMBER
AND C.D. RAO, ACCOUNTANT MEMBER
IT APPEAL NOS. 488 AND 525 (KOL.) OF 2011
[ASSESSMENT YEARS 2006-07 AND 2007-08]
MAY 31, 2012

Section 36(1)(iii) of the Income-tax Act, 1961 - Interest on borrowed capital - Interest free loans to subsidiaries - Assessment years 2006-07 and 2007-08 - Whether when an assessee gives an interest free advance to a one hundred per cent owned subsidiary for its business purposes, it cannot but ordinarily be said to be commercial expedient - Held, yes - Assessee-company had made interest free advance to its subsidiary and group companies - Assessing Officer on finding that assessee had made above advance from its funds borrowed from bank, disallowed Interest paid by assessee on its borrowings in proportion to total advance given to its subsidiary and group companies - However It was found that profit before depreciation earned by assessee was for more than total advance - Whether in view of above facts it would not be said that entire interest free advances were given out of interest bearing funds available to assessee and no part of borrowed funds would be said to have been diverted as non-interest bearing advances to subsidiary companies - Held, yes - Whether therefore, there was no room for any disallowance of interest paid on borrowings, on account of grant of interest free advances to subsidiary companies - Held, yes [In favour of assessee]

8. *The appellant's reliance on the decision of the Hon'ble Supreme Court in the case of Munjal Sales Corporation Vs CIT reported in [2008] 168 taxman 43(SC) and Hero Cycles (P.) Ltd. vs. Commissioner of Income-tax (Central)[2015] 379 ITR 347(SC)are also, I find quite pertinent and cover its case. In the case of before the Hon'ble apex court in Hero Cycles (P) Ltd Vs Commissioner of Income Tax (Central) Ludhiana, reported In [2015] 379 ITR 347(SC), equivalent citation [2015] 63 taxmann.com 308 (SC), it has been adjudicated as under:*

IT : Once it is established that there is nexus between expenditure and purpose of business revenue cannot justifiably claim to put itself in arm-chair of businessman or in position of Board of Directors and assume role to decide how much is reasonable expenditure having regard to circumstances of case

[2015] 63 taxmann.com 308 (SC)
SUPREME COURT OF INDIA
Hero Cycles (P.) Ltd. v.
Commissioner of Income-tax (Central), Ludhiana*
A.K. SIKRI AND ROHINTON FAI NARIMAN, JJ.
CIVIL APPEAL NO. 514 OF 2008
NOVEMBER 5, 2015

Section 36(1)(iii) of the Income-tax Act, 1961 - Interest on borrowed capital (Interest free loans) - Assessment year 1988-89 - Whether once it is established that there is nexus between expenditure and purpose of business (which need not necessarily be business of assessee itself), revenue cannot justifiably claim to put itself in arm-chair of businessman or in position of

Board of Directors and assume role to decide how much is reasonable expenditure having regard to circumstances of case - Held, yes - Assessee filed its return claiming deduction of interest paid on borrowed sums from Bank under section 36(l)(iii) - Assessing Officer finding that assessee had used borrowed funds for giving interest free loans to its subsidiary company and directors, rejected assessee's claim - High Court upheld order of Assessing Officer - It was noted that advance to subsidiary company became Imperative as a business expediency in view of undertaking given to financial institutions by assessee to effect that it would provide additional margin to subsidiary company to meet working capital for meeting any cash losses - Insofar as loans to directors were concerned, said loans were granted out of assessee's own surplus funds - Whether in view of aforesaid, impugned order passed by High Court was to be set aside - Held, yes [In favour of assessee]

In the above circumstances, and respectfully following the ration as laid down by the superior Courts of the land, I find that the action of the. Ld. AO in disallowing a sum of Rs. 71,70,707/ - on account of disallowance of proportionate interest was not justified, and I find that the same cannot be sustained. The ground is therefore allowed in favour of the appellant- assessee.”

5. In view of the reasons stated by the CIT(A) and discussion made by us in the afore-mentioned paragraphs, we find no infirmity in the order of CIT(A) and it is justified. Thus, Ground No.1 raised by the Revenue is dismissed.

6. Ground No.2 raised by the Revenue challenging the action of CIT(A) in deleting the addition made on account of payment of commission in the facts and circumstances of the case.

7. Heard both parties and perused the materials available on record. During the course of assessment proceedings, the AO found that the assessee claimed commission expenses to an extent of Rs.41,28,331/-. To verify the said expenditure, the AO issued notices u/s 136 of the Act to M/s. Singhi Pvt.ltd. & M/s. United Sales Pvt.Ltd., and M/s. Gaurika India Ltd. the A.O doubted and held the AR himself the said reply and brought on record the reply by the Ld.AR himself in the name of M/s. Guarika India Ltd. In respect of other two concerns, the assessee filed written submissions by stating that the assessee has transactions with the said two concerns through banking channels and they were very much in existence. The AO found the submissions of the assessee not acceptable and treated the commission expenditure as bogus and added to the total income of the assessee.

8. It appears that the assessee filed a complete chart before the CIT(A) and contended the said commission agents represent themselves as our sales managers and the arrangements between the agents and our firm was internal and obviously not known to the customers. The CIT(A) also examined the submissions made by the agents during the course of proceedings u/s 133(6) of the Act and found the assessee had affected sales of Rs.42,51,70,851/- during the year under consideration and commission of Rs.41,28,331/- was payable/paid on account of said sales. According to CIT(A) on examination of the record found that the agents replied in response to the notices u/s 133(6) of the Act and found that they submitted fair amount of details and documentary evidences before the AO such as tax invoices of the commission, proof of payment, TDS certificate and P&L A/c of the parties. The CIT(A) by placing reliance on the decision of Hon'ble High Court of Calcutta in the case of *Rajarani Exports Pvt. Ltd. [2014] 361 ITR 152 (Cal.)* and deleted the addition made by the AO on account of trading commission expenses as bogus. The relevant portion of which is reproduced herein below:-

11. "Hon'ble Jurisdictional Calcutta High Court in the case of CIT vs Rajarani Exports (P) Ltd.[2014] 361 ITR 152 (CAL) in para 5 of the order said as under:

Para 5. " The assessee has made payment for commission and has been rendered services in consideration of the same. As a matter of fact, It is not even revenue's case that no services have been rendered at all. The fact that services have been rendered by a party other than the agent to whom commission is paid is wholly immaterial so far as deductibility in the hands of the assessee is concerned. "

12. I find that the Hon'ble Delhi High Court in the case of Printers House Pvt Ltd, reported in 188 Taxman 60, has held that where there is no evidence on record to show that the commission was paid to nay near relative, family member or sister concern, there was no iota of evidence to show that the commission came back to the assessee in any form and the payment of commission represented only accommodation entry, there was no justification to disallow the same, particularly when the assessee gave full details including address of the buyers and the agents, details of payments etc. I also find that the judgment of the Hon'ble Jurisdictional High Court of Calcutta, in the case of C.I.T. Vs Alfa Hydronics Pvt Ltd, ITA No 549/2004 decided on 10th November, 2014, wherein it has been held that when there was nothing to show that the transaction of the payments of commission was not genuine or the commission was excessive or unreasonable, no disallowance can be made. The relevant portion of the judgment is reproduced as below:

"The Court: This appeal under section 260A of the Income Tax Act has been preferred by the appellant/revenue against the order dated 29th September, 2003 passed by the Income Tax Appellate Tribunal, "E" Bench, Kolkata in ITA 1203 (Cal) of 1999 in respect of Assessment Year 1994-1995 on the following questions:

(a) "Whether on the facts and in the circumstances of the case, the Ld. Tribunal was right in holding that the assessing Officer was not justified in disallowing the claim for payment of commission made to the two parties on the basis of misconception of law or misreading of the facts?"

(b) Whether on the facts and in the circumstances of the case, Order of the Ld. Tribunal in allowing the commission purported to have been paid by the Assessee company was not supported by any materials on record and as such the same is perverse in the eye of law?"

We find that the Tribunal while allowing the appeal of the assessee and held as under:

"We have considered the rival submissions and gone through the facts of the case. We find that in the present case there is a binding contract between the parties by which the recipients of the commission had the right to enforce realisation of commission stipulated between the parties. We also find from the communication between the parties that the payment was duly received by the parties and paid by the assessee by account payee cheques. The revenue has not alleged that the parties to the transactions are related to each other or that the payments are not genuine or that the payments having been made by the assessee to the recipients have found their way back to the assessee some way or the other. Such being the case, we find that the authorities below were not justified in rejecting the claim of the assessee for payment of commission. Since all the Ingredients necessary for genuine business transaction exist in this case, we do not find any merit in the addition made by the AO and in the action of the CIT(A) in confirming the same. In reversing their orders, and respectfully following the decision of the Hon'ble Calcutta High Court in the case of Mather & Plant (India) Ltd. (Supra) and the case of the Tribunal, Mumbai Bench (Third Member) discussed herein above, we allow the appeal of the assessee. "

Heard Mr. Das, learned advocate appearing for the appellant revenue and Mr. J. P. Khaitan, learned senior advocate appearing for the respondent assessee. Before us the revenue could not demonstrate either the money was not paid or the money was paid and routed back to the assessee. In the circumstances interference with the order of the Tribunal is not warranted. No question arise for adjudication. The application and the appeal are dismissed.

(SOUMITRA PAL, J.) (ARINDAM SINHA, J.) msen"

Overall, from the facts and circumstances emanating in the case, and the judicial decisions applicable, especially that of the Hon'ble Kolkata High Court I find that the Ld. AO was not justified in making the impugned disallowance of Rs.41,28,331/-, and therefore the same is ordered to be deleted."

9. In view of the decision of Hon'ble High Court of Calcutta and discussion made by us in the afore-mentioned paragraphs, we find no infirmity in the order of CIT(A) and it is justified. Thus, Ground No.2 raised by the Revenue is dismissed.

10. Ground No.3 is relating to deletion of addition of Rs.7,01,459/- under the head "cutting charges" in the facts and circumstances of the case.

11. Heard both parties and perused the materials available on record. The AO found that the assessee claimed job expenses in the trading account towards cutting charges amounting to Rs.7,01,459/- and for not giving any details, the AO added same to the total income of the assessee. The CIT(A) found that the assessee submitted all the details in respect of cutting charges as asked by the AO vide its written submissions dated 21.12.2016. The CIT(A) examined the entire record and found the addition made by the AO is not sustainable for the reasons stated as under:-

12. DECISION:

1. "I have examined the action of the Ld. AO in making the impugned disallowance of Rs.7,01,459/- under head 'cutting charges'. The Ld. AO has recorded that in the Trading A/c of Job Work Business, it is seen that under the head 'Job Expenses' the assessee-firm paid 'Cutting Charges' amounting to Rs.7,01,459/-. The Ld. AD required the assessee to produce the Ledger of such account along with the bills/vouchers vide his Office requisition dated 20.12.2016, and that the assessee was asked to submit details of TDS made in this regard if any. According to the Ld. AO, as there was no compliance, the entire amount to the tune of Rs.7,01,459/- under the head 'Cutting charges' was to be disallowed and added to the total income of the assessee firm.

2. In appeal, it is the contention of the assessee that it had submitted all the document requisitioned by the Ld. AO, and the same is evident from the firm's submission letter dated 21.12.2016 which is on record. The relevant TDS certificates were also filed before this appellate forum along with a copy of the written submissions before the Ld. AO.

3. I have also examined the assessment record in this matter, and find that the appellant's contentions made in the matter are on record and found to be correct. In any case the necessary TDS has been effected, and the legality of the disallowance made by the Ld.AO gets questionable. On careful consideration of the appellant's submission along with the supporting details/evidences furnished, perusing the facts of the case including the

impugned Assessment order thereon and other materials available on record, I find that the disallowance made by the Ld.AO was without any sustainable basis, and therefore, the grounds of appeal is allowed in favour of the appellant-assessee.”

12. In view of the reasons recorded by the CIT(A) in his impugned order at Page 35, we find no infirmity in the order of CIT(A) and it is justified. Thus, Ground No.3 raised by the Revenue is dismissed.

13. Ground No.4 is relating to the deletion of telephone and fax charges for personal use.

14. Heard both parties and perused the materials available on record. It is noted that the assessee debited an amount of Rs.1,36,145/- under the head “telephone and fax charges”. For not giving suitable explanation, the AO added an amount of Rs.1,36,145/- @ 10% to the total income of the assessee. The CIT(A) deleted the said addition by observing that the AO failed to specifically pinpoint as to which the voucher for personal use and not for business use, deleted the addition made under the head disallowance by holding not maintainable. We find admittedly that there was no evidence before the AO and the CIT(A) explaining the said expenditure under the head telephone and fax charges were incurred wholly for the business purposes and the disallowance made by the AO in our opinion is reasonable not excessive. Therefore, the order of CIT(A) is set aside and it is not justified. The order of A.O is restored. Thus, Ground No.4 is allowed.

15. Ground No.5 is relating to deletion of addition made on account of motor car fuel expense and depreciation for personal use.

16. Heard both parties and perused the materials available on record. During the course of assessment proceedings, the AO found that the assessee used the car other than business purposes but did not show any personal use. Further, he found that the payments were made only by cash. For not having giving suitable explanation, the AO added 10% of Rs.5,28,528/- to the total income of the assessee. The CIT(A) deleted the said addition as it is made on

the basis of estimation without specifying any pointing as to which vouchers was for personal use. We find that no evidence whatsoever filed before the AO & CIT(A) and even before this Tribunal. Therefore, in the absence of any evidence showing that the car has been used for the purpose of business purpose only. Therefore, the order of CIT(A) is not justified in deleting the addition made by the AO and the addition made by the AO in our opinion is reasonable and not excessive. Therefore, the order of AO is restored. Thus, Ground No.5 raised by the Revenue is allowed.

17. Ground No.6 relating to deletion of addition made under the head “carriage inward”.

18. Heard both parties and perused the materials available on record. The AO found that the assessee debited an amount of Rs.19,44,313/- under the head “carriage inward”. For not submitting any bills/ vouchers/ledger copy, the AO added 10% of such expenditure being Rs.1,94,431/- to the total income of the assessee. It was contended before the CIT(A) that this expenditures were incurred for business and there was no claim of any excess expenditure for the year under consideration compared to other three years period. It is noted that the AO on the basis of estimation added to the estimation disallowed 10% of such expenditure but however it is seen that in the impugned order, the CIT(A) after examination of record found fault with the AO for observing that no evidence is filed in this respect and held that the assessee filed all relevant documents vide covering letter dated 21.12.2016 along with documentary evidences i.e. ledger copy of ledger inward, bills, vouchers services, tax return etc. Therefore, it is clear that the assessee submitted the relevant evidence before the AO but it was not considered by the AO in the assessment proceedings. Since the CIT(A) examined the record and found the same in support of the expenditure claimed under carriage inward. Therefore, we find no infirmity in the order of CI(TA) and it is justified. Thus, Ground No.6 raised by the Revenue is dismissed.

19. Ground No.7 is relating to deletion of addition of Rs.1,70,177/- on account of undisclosed TDS.

20. Heard both parties and perused the materials available on record. The AO found from individual transaction statement (ITS) details that the assessee did not disclose TDS to the tune of Rs.11,402/-. In explanation, the assessee submitted that it had no transaction with the concerned parties as mentioned in AO's order in page No.3 and they were unaware of the tax deduction in this regard. The AO did not find the submissions of the assessee as acceptable and added corresponding income of Rs.10,70,117/- to the total income of the assessee. The CIT(A) in the first appellate proceedings found that the AO later on passed an order u/s 154 of the Act wherein he deleted the addition of Rs.10,00,000/- and restricted the addition to Rs.1,70,117/-. According to CIT(A), the said details of TDS is not reflected in 26AS and the addition is not maintainable when the assessee denies the transactions with the said parties. Further, he held that the responsibility is upon the AO to conduct independent inquiry in respect of those parties regarding the information with the said transactions. We find no independent inquiry as rightly pointed out by the CIT(A). Therefore, when there is no proper inquiry by the Assessing Officer in proper perspective and the addition deleted by the CIT(A) is justified. We find no infirmity in the order of CIT(A). Thus, Ground No.7 raised by the Revenue is dismissed.

17. In the result, the appeal of the Revenue is partly allowed.

Order pronounced in the open court on 03.05.2019.

Sd/-
(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Sd/-
(S.S.VISWANETHRA RAVI)
JUDICIAL MEMBER

Date:- 03.05.2019
Amit Kumar

Copy forwarded to:

1. Appellant- ACIT, Circle-35, Kolkata-700107.
2. Respondent- M/s. Kwality Steel Processors, 4, India Exchange Place, 2nd Floor, Kolkata-700001.
3. CIT-Kolkata
4. CIT(Appeals)-Kolkata
5. DR: ITAT -Kolkata Benches

By order

AR/H.O.O
ITAT, KOLKATA