

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

BEFORE SH. R.K PANDA, ACCOUNTANT MEMBER

ITA No.7831/Del/2018

Assessment Year: 2013-14

Sant Singh Ram Lal 3963-B, Naya Bazar, Delhi. PIN: 110006 PAN: AASFS4026J	Vs	ITO Ward-47(1) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Written Submission
Respondent by	Sh. S. L. Anuragi, Sr. DR

Date of hearing:	06/05/2019
Date of Pronouncement:	20/05/2019

ORDER

PER R.K. PANDA, AM:

1. This appeal filed by the assessee is directed against the order dated 30th October, 2018 of the CIT(A)-16, New Delhi for A. Y 2015-16.
2. The assessee in the various grounds of appeal has challenged the order in of the CIT(A) in restricting the allowance of interest on unsecured loan and depreciation.

3. Facts of the case, in brief, are that the assessee is a partnership firm engaged in the business of trading in Cosmetics, Shampoos and Allied items. It filed its return of income on 22nd August, 2013 declaring total income of Rs. 14,23,370/-. During the course of assessment proceedings, the A.O noted that the assessee has paid interest of Rs. 30,72,317/- to the following persons covered u/s 40A(2)(b) of the Income Tax Act, from whom the assessee has taken unsecured loan:-

1.	Sri Lalit Kumar Singhal	12,53,863/-
2.	Sri Dhruv Singal	3,13,197/-
3.	M/s R. K. Trust	9,23,446/-
4.	Ms. Diksha Singha	<u>5,81,811/-</u>
	Total amount	30,72,232/-

4. In absence of any satisfactory explanation given by the assessee to justify as to why the assessee has paid interest @ 18% to the specified persons whereas it has paid interest @ 12% to others., the A.O following the order of his predecessor for the preceding Assessment Year and keeping in mind the prevailing market rate of interest, made disallowance of Rs. 4,00,000/-. Similarly, the A.O disallowed an amount of Rs. 104313/- out of telephone, conveyance, motor car expenses and depreciation on motor car being probable personal use. While doing so, he has observed that in the preceding year also similar disallowance was made.

5. In appeal, the Ld.CIT (A) directed the A.O to allow interest @ 13.75% i.e. an interest rate of 2% above the base rate offered by the Bank which was 11/75%. The remaining payment of interest to specified persons was treated by him as excessive and he sustained to the same to that effect. So far as the amount of depreciation on motor car is concerned, he also upheld the action of the A.O in absence of any log book maintained by the assessee so as to justify that the vehicle is used exclusively for the purpose of business and not for personal uses. The assessee is not in appeal for other expenses sustained by the CIT(A), therefore, we are not concerned with the same.

6. Aggrieved of such order of the CIT (A), the assessee is in appeal before the Tribunal.

7. None appeared on behalf of the assessee. However, written synopsis was filed. I have gone through the same and after hearing the Ld. DR. I proceed to decide the appeal. It is the submission of the assessee in the written synopsis that the assessee is carrying on the business of distributorship of Hindustan Unilever Ltd ('HUF' for short). While HUL takes payment before or at the time when goods are sent, however, the assessee has to offer credit to his customers as per practice. Therefore, the assessee requires huge working capital. The assessee, therefore, borrowed funds from the relatives of partners. It has been mentioned in the written synopsis that while taking loan from banks, the assessee has to offer collateral security to the

banks where as no such collateral security is required, when loans are taken from friends and relatives. Further rate of interest charged by the banks depend on the financial position of the loan taker, availability of funds etc. The rate of interest charged by the bank for the period 1/4/2012 to 31/3/2013 is around 14.50%, whereas the assessee in the instant case has given interest @ 15% in two cases and in the remaining two cases, the rate of interest was 12%. It has further been mentioned in the synopsis that the two persons to whom interest @ 15% has been given are coming in the 30% tax rate and the assessee is also paying tax @ 30%. therefore, there is no loss to the Revenue. So far as the disallowance of depreciation is concerned, there is no argument by the assessee in the written synopsis.

8. The Ld. DR on the other hand submitted that since the assessee has paid interest @ 15% to certain specified persons where as interest paid to others is 12%, therefore, the CIT(A) has very reasonably granted part relief to the assessee and, therefore, the assessee should not have further grievance.

9. I have considered the rival arguments made by both the sides and perused the orders of the authorities below. It is the submission of the assessee in the written synopsis that it has paid interest @ 15% only to Ms. Diksha Singhal and R. K. Trust where as in the other two cases such interest has been paid @ 12%. It is also the submission of the assessee in the written synopsis that

rate of interest charged by the bank for the period from 1/4/2012 to 31/3/2013 was around 14.50%.

10. I find from the assessment order that the A.O has observed that the assessee has paid interest @ 18% for which he disallowed an amount of Rs. 4 lacs being the excess payment of interest made to the specified person u/s 40A(2)(b). I find some force in the submission of the assessee in the written synopsis that for obtaining loan from bank, the assessee has to offer some collateral security where as for obtaining loans from friends and relatives, no such security is required. Since the assessee has paid interest @ 12% to two specified persons and interest @ 15% to the other two specified persons where as the bank rate of interest during the period from 1/4/2011 to 31/3/2013 is around 14.5%, therefore no disallowance is called for. However, the above facts need verification at the level of the A.O I, therefore, deem it proper to restore the issue to the file of the A.O with the directions to verify that the assessee has paid interest @ 12% to two specified persons and @ 15% to the other two specified persons. He has to verify as to whether the rate of interest charged by the bank for the period from 1/4/2012 to 31/3/2013 was around 14.5%. If the above submission made by the assessee in the written synopsis has found to be correct then no disallowance is called for. The first issue raised by the assessee in the grounds of appeal is allowed for statistical purpose.

11. So far as, the disallowance of depreciation is concerned, there was no argument in the written synopsis for which the order of the CIT (A) on this issue is upheld.

12. In the result, the appeal of the assessee is partly allowed for statistical purposes.

The decision was pronounced in the open court at the time of hearing itself i.e., on 20.05.2019.

Sd/-

(R.K PANDA)
ACCOUNTANT MEMBER

R.N*

Date:- 20 .05.2019

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	08.05.2019
Date on which the typed draft is placed before the dictating Member	08.05.2019
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	20.05.2019
Date on which the final order is uploaded on the website of ITAT	20.05.2019
Date on which the file goes to the Bench Clerk	21.05.2019

Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	