

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

**I.T.A .No.-4596/Del/2018
(ASSESSMENT YEAR-2014-15)**

MANIKANT THAKUR, 1020, 10 TH FLOOR, ROOTS TOWER, LAXMI NAGAR DISTRICT CENTER, LAXMI NAGAR, DELHI (PAN: ABUPT5742P) (APPELLANT)	vs	ITO, WARD 2(4), GURGAON HARYANA (RESPONDENT)
Appellant by	Shri Anil Jain, Adv. & Sh. Naman Jain, Adv.	
Respondent by	Shri S.L. Anuragi, SR. DR.	

ORDER

This appeal filed by the Assessee is directed against the order dated 17.01.2018 of the Ld. CIT(Appeals)-1, Gurgaon relevant to assessment year 2014-15 on the following grounds of appeal: -

1. The Ld. CIT(A) has erred in confirming the order of the AO by making the assessment at the income of Rs. 34,66,000/- as against the returned income of Rs. 16,62,690/-.
2. The Ld. CIT(A) has erred in confirming the disallowance by AO of interest paid expenses of Rs. 11,18,006/- u/s. 36(1)(iii) of the Act.
3. The Ld. CIT(A) has erred in confirming the disallowance made by AO of Rs. 6,85,300/- on account of rent expense payment.

4. The order of the Ld. CIT(A) is against law and facts of the case.

5. The appellant craves the right to add, amend or withdraw any grounds of appeal at the time of hearing.

2. The brief facts of the case are that Assessee e-filed his return of income on 29.11.2014 declaring income of Rs. 16,62,690/-. The case of the assessee was selected for scrutiny under CASS and notice u/s. 143(2) of the Income Tax Act, 1961 (in short "Act") was issued on 28.8.2015. The notice u/s. 143(2) of the Act was also sent on e-mail and thereafter notices u/s. 142(1) of the Act alongwith questionnaire was issued on 6.7.2016, 6.9.2016, 20.9.2016, 14.1.2016 and 14.12.2016, in response to the notice, the AR of the assessee filed necessary information and details. The written submissions filed alongwith necessary documents and explanations. During the assessment proceedings, the AO noted that assessee has granted interest free loan of Rs. 93,16,718/- to various parties, on the other hand the assessee has paid interest of Rs. 12,81,691/- on borrowing which was allowed as deductions, he was confronted vide notice u/s. 142(1) dated 14.12.2016 that interest free advance was granted for non-business purposes; and why the provisions of section 36(1)(iii) of the Act, be not invoked. In his reply dated 19.12.2016 which was not considered by the AO because the assessee has granted loan for non-business purposes. Therefore, the AO made the addition of Rs.

11,18,006/- (being 12% of Rs. 93,16,718/-) was disallowed under the provisions of section 36(1)(iii) of the Act and added back to the return income of the assessee. AO further observed that the assessee has debited Rs. 6,85,300/- to P&L account as rent; to verify the genuineness of the claim of the assessee, the AR of the Assessee vide order sheet entry dated 14.12.2016 was asked to furnish copy of rent/ lease deed of the said premises alongwith ownership documents of the parties to whom rent has been paid. But vide its rely dated 19.12.2016 the AR inter alia submitted that in respect of factory rent it is being clarified that the rent payment has been paid to different persons because all these having right in the property but the property being the ancestral property and is located in the Lal Dora area so the shares of the owners has not been transferred to them through registered deed. Factory rent has been paid to the following individuals and payment to each person is below the threshold limit for TDS deduction, therefore, no TDS has been deducted from rent payment and no lease agreement is available. AO further observed that since the assessee has failed to file any documentary evidence regarding rent/ lease deed and also the ownership documents of the parties to whom rent have been paid. As such the assessee has failed to prove the genuineness of his claim of rent of Rs. 6,85,300/-, therefore, the claim of payment of rent of Rs. 6,85,300/- was held as non-genuine and the

same was disallowed and added back to the return income of the assessee. Accordingly, the AO completed the assessment at Rs. 34,66,000/- vide order dated 23.12.2016 u/s. 143(3) of the Act. Against the assessment order, the assessee appealed before the Ld. CIT(A), who vide his impugned order dated 17.01.2018 has dismissed the appeal of the assessee. Aggrieved with the impugned order, assessee is in appeal before the Tribunal.

3. Ld. Counsel for the assessee has stated that as regards addition of Rs. 11,18,006/- is concerned, all the parties are given the business advances as non person is related to the assessee except Sai Tech Electrical which is proprietor ship firm of the wife of the assessee. The amount advanced to this party is Rs. 47,25,762/- (as on 31.3.2014) for the purpose of business expediency / commercial expediency. This firm was started for manufacturing of 'heat shrink' which is used in inverter and this is for backward integration of the same business activity and expanding of business presence in the market by supplying other component of the inverter. The ledger account of the said firm in the books of assessee has a running account and not only the debit balances. It was further submitted that the expediency is there and in case the same is not acceptable than the advances to the extent of capital of the assessee i.e. Rs. 2576086/- can be held to be out of the interest free funds available to the assessee and in support of this

contention, he relied upon the decision of the Hon'ble Supreme Court of India in the case of SA Builders Ltd. vs. CIT and the decision of the Hon'ble Punjab and Haryana High Court in the case of Stainless Steel Inds. vs. CIT 324 ITR 396. Further with regard to addition of Rs. 6,85,300/- on account of factory rent expenses is concerned, Ld. counsel for the assessee submitted that the parties have legal right in the property on which the factory of the assessee is running, however, the said building is an ancestral property located in Lal Dora area, so the shares of the owners are not individually defined and transferred through registered deeds. It was also submitted that there is no implication of TDS on the said payments since they are below the specified threshold limit as defined in section 194I and as per the provision of section 30 as laid down in the Act, rent is an allowable expenditure if the building is used for the business purposes. Hence, he requested to delete the disallowance of expenses of Rs. 6,85,300/-.

4. On the other hand, Ld. DR relied upon the orders of the authorities below.

5. I have heard both the parties and perused the records especially the impugned order. Ground no. 1, 3 & 5 are general in nature, hence, need not be adjudicated. As regards ground no. 2 is concerned which is relating to Addition of Rs. 11,18,006/-, I note that the assessee has contended that the advance was given to various purposes for both

business and non business purposes. However, no evidence of any business transaction with any of these concerns was filed by the assessee, therefore the case laws cited by the Ld. counsel for the assessee do not help the assessee. It was the contention of the assessee's counsel that borrowed funds were not used for the purpose of giving advance and that the advances were given out of reserves and surplus and AR of the assessee submitted that the assessee had only one OD account which was used for both business purposes as well as for advancing the loan and at no point of time this OD account have any credit balance. Hence, it is evident that the interest bearing funds were used for the purposes of giving advance for non business purposes. Therefore, the disallowance was made by the AO was accordingly rightly confirmed by the Ld. CIT(A), which does not need any interference on my part, hence, the ground no. 2 is dismissed.

5.1 As regards disallowance of Rs. 6,85,300/- on account of rent payment is concerned, it is noted that assessee had failed to furnish any documentary evidence with regard to his claim of payment of rent to the 7 persons as recorded in the assessment order. No evidence of ownership of the property by these persons was furnished. The assessee had also failed to furnish the copies of lease agreements. In these circumstances, the genuineness of the claim of deduction pertaining to rent expenditure remained unverified. Even during the course of

appellate proceedings, no evidence of ownership of property by the 7 persons to whom the rent was claimed to have been paid was furnished. Out of the 3 persons in whose names the electricity bills were filed only one person figured in the list of 7 persons to whom the rent paid. In the case of remaining 2 persons there was no rent payment. The rent agreement filed by the assessee is in the name of Sh. Kurma whereas no payment has been made to him. From all the aforesaid facts, it is evident that the genuineness of the rent expenses claimed by the assessee has not been established. The disallowance made by the AO on this account was rightly confirmed by the Ld. CIT(A), which does not need any interference on my part, hence, the ground no. 3 is dismissed.

6. In the result, the Appeal of the Assessee is dismissed.

Order pronounced on 21-05-2019.

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date: 21/05/2019

SRBhatnagar

Copy forwarded to: -

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

By Order,

Assistant Registrar, ITAT, Delhi Benches

