

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

Before Sh. T. S. Kapoor, Accountant Member

ITA No. 102/Del/2019 : Asstt. Year : 2012-13

Subhash Chander Manocha, Cottage No. 7, West Patel Nagar, New Delhi-110008	Vs	ACIT, Circle-50(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAPP7473C		

Assessee by : Sh. Gulshan Gaba, CA

Revenue by : Sh. S. L. Anuragi, Sr. DR

Date of Hearing: 28.05.2019	Date of Pronouncement: 31.05.2019
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ORDER

This is an appeal filed by assessee against the order of Commissioner of Income Tax (Appeals)-17, New Delhi dated 28.09.2018.

2. The assessee has taken following grounds of appeal:

"1. The Ld. CIT(A) has, in view of the facts & circumstances of the case and in law, grossly erred in upholding the order passed under section 143(3) of the Income Tax Act, 1961 by the Ld. AO.

2. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in upholding the order passed under section 143(3) of the Income Tax Act, 1961 by disallowing a sum of Rs. 1,67,264/- on account of Notional Interest Income in respect of Loans given by the assessee without appreciating the material on record.

3. The Ld. CIT(A) failed to interpret the Directions given by the honorable Income Tax Appellate Tribunal in letter and spirit.

4. That the Appellant craves your honor's leave to add, alter, modify, change, substitute, withdraw

any of the grounds of appeal at any stage of appellant proceedings."

3. At the outset, the Authorized Representative invited our attention to the fact that there was a delay of 24 days in filing the appeal which happened due to the fact that the accountant of the assessee got misplaced the order of Id. CIT(A) which was ultimately found and only after finding the copy of Id. CIT(A) order, the appeal could be filed and which resulted into the delay of 24 days. The Id. AR submitted that assessee has filed duly signed and notarized affidavit to support the reason for delay in filing the appeal and keeping in view the substantial justice it was prayed that the delay may be condoned.

4. The Id. Departmental Representative had no serious objection for condoning of delay. Therefore, the Id. AR directed to proceed his argument.

5. The Id. AR submitted that this was a second round of appeal before the Hon'ble Tribunal and in the first round the Hon'ble Tribunal vide order dated 29.12.2016 had remitted the issue back to the Assessing Officer with a direction to verify the claim of assessee regarding availability of sufficient surplus fund to advance interest free loan to his children. Explaining the facts of the case, the Id. AR submitted that assessee is running a proprietorship concern in the name of M/s Max Engineering & Marketing Co. The assessee filed return of income declaring income of Rs.35,91,300/-. During assessment proceedings, the Assessing Officer observed that assessee had advanced interest free loans to family members and therefore, the notional interest on such loans and advances was disallowed. The assessee carried the matter to Id. CIT(A) and then to Hon'ble Tribunal which vide order dated 29.12.2016 remitted the matter back to Assessing Officer

with the limited purpose of verifying surplus fund available to the assessee. The Id. AR submitted that instead of verifying and commenting on the availability of funds, the Assessing Officer again disallowed the same amount without commenting anything on the availability of funds. It was submitted that Id. CIT(A) also dismissed the appeal of the assessee by holding that assessee had balance in the over draft account and therefore, it cannot be said that assessee was having surplus funds. The AR submitted that assessee had availed unsecured loans of Rs.204.37 lakhs from friends and relatives as on 31.03.2012 and out of which interest was paid only on unsecured loan amounting to Rs.142.89 lakhs and therefore, assessee was still availing interest free unsecured loans to the extent of Rs.61.48 lakhs. Besides the above unsecured loans, the assessee was having capital to the extent of Rs.1,78,07,047/- which is apparent from the copy of balance sheet from paper book page 13. Therefore, it was prayed that assessee had sufficient interest free funds and having debit balance in the over draft account does not mean that assessee had not got sufficient interest free funds as is evident from the copy of balance sheet. The Id. AR placed reliance on the judgment of Hon'ble Supreme Court in the case of Munjal Sales Corporation Vs CIT wherein the Hon'ble Court has held that where the interest free funds are sufficient to cover interest free advances no disallowance was warranted u/s 33(1)(iii) of the Act. The Id. AR submitted that assessee had advanced a small amount of interest free loan to its family members which is quite negligible as against the available funds.

6. The Id. Departmental Representative, on the other hand, relied on the orders of authorities below.

7. I have heard the rival parties and have gone through the material placed on record. I find from the copy of balance sheet at paper book page 13 & 14 that the assessee had balance in his capital account to the extent of Rs.178.07 lakhs. Further, the assessee had unsecured balance

to the extent of Rs.204.37 lakhs out of which interest bearing unsecured loans are only to the extent of Rs.142.88 lakhs and therefore, the assessee had got sufficient interest free funds to cover the amount of interest free advances to the family members. These submissions were made to Assessing Officer during set aside proceedings also which has been noted down by Assessing Officer in his assessment order, however, without verifying these submissions of the assessee, the Assessing Officer upheld the addition made by earlier Assessing Officer. I find that assessee is a sole proprietor and he could have advanced the amount of loan by debiting to his capital account and in that situation the Revenue authorities would not have any problem as the assessee cannot be denied the facility of making drawings out of his capital account. Therefore, the addition sustained by Id. CIT(A) is not justified. The Hon'ble Supreme court in the case of Munjal Sales Corporation Vs CIT has clearly laid down the proposition that if interest free funds available with an assessee are sufficient to cover interest free advances, no disallowance u/s 36(1)(iii) of the Act can be made.

8. In view of the above, I delete the disallowance sustained by Id. CIT(A).

9. In the result, the appeal of the assessee is allowed.

(Order pronounced in the Court on 31st day of May, 2019 at New Delhi)

Sd/-
(T. S. Kapoor)
Accountant Member

Dated: 31/05/2019

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR