

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “एकल सदस्यीय”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH ‘SMC’ CHANDIGARH**

**श्रीमती दिवा सिंह, न्यायिक सदस्य
BEFORE: SMT. DIVA SINGH, JM**

आयकर अपील सं./ ITA Nos. 1532 to 1534/CHD/2018

निर्धारण वर्ष / A.Y. : 2012-13 to 2014-15

M/s Chauhan Paper P.Ltd., 8/75, Thapar Colony, Yamuna Nagar.	बनाम VS	The ITO, Ward - 1, Yamuna Nagar.
स्थायी लेखा सं./PAN No: AAACC7081J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Tej Mohan Singh

राजस्व की ओर से/ Revenue by : Shri Harjinder Singh, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 23.05.2019

उद्घोषणा की तारीख/Date of Pronouncement : 26/06/2019

आदेश/ORDER

The present appeals have been filed by the assessee assailing the correctness of the consolidated order dated 18.09.2018 of CIT(A), Panchkula pertaining to 2012-13, 2013-14 and 2014-15 assessment year.

2. ITA 1532/CHD/2018 is first taken up on the request of the parties wherein it was a common stand that ground No. 1 of the said appeal is identical to ground No. 2 in ITA 1533 and 1534/CHD/2018. Apart from the said common issue in all these three appeals in the remaining two appeals of 2013-14 and 2014-15 assessment years, the sole remaining issue was stated to be identical.

3. Accordingly addressing the common issue in the three appeals, the Id. AR invited attention to ITA 1532/CHD/2018 for addressing the first common issue. Ground No. 1 thereof reads as under :

“1. That the Ld. Commissioner of Income Tax(Appeals) has erred in law as well as on facts in upholding the addition of Rs.4,29,610/- made on account

of alleged excess depreciation claimed on commercial vehicle in utter disregard of the explanations rendered which is arbitrary and unjustified.

4. The facts relevant to the said ground are that the assessee for the tempo/trax vehicles used in its business claimed a higher depreciation @ 30% stating that the use was for the business purposes. The AO reduced it to 15% rejecting the explanation offered noting that it was self used.

4.1 The issue was carried in appeal by the assessee however, restriction of the depreciation claimed was confirmed by the CIT(A). Aggrieved by this, assessee is in appeal before the Tribunal.

5. The Id. AR relied upon the submissions advanced before the AO and CIT(A). It was his submission that the vehicle was owned by the assessee and was used exclusively for its business. Thus, the claim of higher depreciation on account of the peculiar use of the assessee deserves to be allowed. It was his argument that the vehicles are registered under Commercial Vehicle Act and are used exclusively for transporting the assessee's material on commercial basis. *The assessee company sells its material on FOR Destination and transportation expense is incurred by the assessee company itself.* It was submitted that had the vehicles been obtained on hire from outside, similar use of vehicles would have entitled the owner to claim higher depreciation. Simply because the assessee has used his own vehicles, the claim has been denied. It was his argument that the vehicles have been performing the same nature of activity which the hired vehicles would have been performing. The depreciation which would have been available to a tempo/trucks vehicle on hire should have been made available to the assessee also.

6. The Id. Sr.DR Mr. Harjinder Singh opposing the said arguments relies upon the impugned order so as to contend that the prayer of the assessee is not supported either by the Statute or by any decision of any Court. It was his submission that the issue has been dealt with by the CIT(A) on which heavy reliance was being placed by the department.

7. I have heard the submissions and perused the material available on record. The relevant finding challenged by the assessee in the present appeal is extracted hereunder for ready reference :

5.2 I have gone through the facts of the case and the written submissions filed by the appellant. It is observed that the depreciation at the rate of 30% is allowed for a vehicle only if it is used for transport business. For a vehicle which is not used for transport business, the allowable rate of depreciation is 15%. These facts are not in dispute. The only question that arises is whether the vehicles which were used to send the finished goods to the buyers can be stated to be used for transport business. Admittedly, the appellant company is not engaged in the transport business. The AR of the appellant has contended that the material is sold FOR destination and the transportation expenses conducted by the assessee company itself. It has been contended that if the vehicles were hired from outside, they would have played the same role, but at a higher rate of transportation charges. The AR of the appellant has further contended that since the vehicles owned by the appellant company are performing the same nature of activity which hired vehicles perform, the same rate of depreciation should be allowed on these vehicles. This contention of the appellant is without merit as the higher rate of depreciation has been specifically allowed for vehicles engaged specifically in the transport business on hire. In the case cited by the appellant, the vehicles were being used in the predominantly to transport material that did not belong to the assessee. Therefore, it was held that since a large part of business receipts of the assessee were received for transportation of goods from one place to another, it could be presumed that the assessee was running the vehicles on hire. Thus, the case law relied upon by the appellant differs on facts from the present case. The business of the appellant company is not transport and the vehicles are used only for supply of the appellant's own finished goods to the buyers. Hence, it cannot be said that the appellant is running the vehicles on hire and accordingly, the vehicles are not eligible for higher rate of depreciation. In view of the above, the disallowance made by the AO is upheld. This ground of appeal is dismissed.

7.1 On a consideration thereof, I find that in the face of the statutory provisions which permit a higher depreciation for vehicles on hire, the assessee's claim on facts has correctly been rejected. On facts, no infirmity has been pointed out by the assessee. No decision of any Court or Tribunal has been cited permitting self use for a claim of higher depreciation. In the absence of reference to any statutory provision permitting the claim or any decision of any High Court or Apex Court permitting such a relief I find no good reason to vary the conclusion arrived at. Being satisfied by the conclusion drawn by the CIT(A) in the face of the statutory provisions, ground No. 1 raised by the assessee which is the sole issue in ITA 1532/CHD/2018 is rejected. In the result, ITA 1532/CHD/2018 is dismissed.

8. Addressing the common issue in ITA 1533 & 1534/CHD/2018 raised by way of ground No. 1 in the respective appeals, the common stand is that the lead order is available in ITA 1533/CHD/2018. The specific ground is reproduced from ITA 1533/CHD/2018 for ready reference:

That the Ld. Commissioner of Income Tax(Appeals) has erred in law as well as on facts in upholding the addition of Rs.7,43,473/- made on account of disallowance of interest claimed applying the provisions of Section 36(l)(iii) which is arbitrary and unjustified.

9. The relevant facts of the case are that the assessee who is stated to be deriving income from manufacturing and trading of exercise note books and trading in papers claimed an expense of Rs. 1,07,64,597/- as interest/bank charges in its Profit & Loss Account. The AO found that the assessee who though had paid interest to bank had not charged any interest on advances given to the following persons :

<i>Shiksha Bharti Foundation</i>	<i>Rs. 50,00,000/-</i>
<i>Advance against land (Shri Foja Singh)</i>	<i>Rs. 10,00,000/-</i>
<i>Shri Prateek Satija</i>	<i>Rs. 10,00,000/-</i>
<i>Shri Anil Modi</i>	<i>Rs. 1,00,000/-</i>
<i>M/s Umesh Developers P.ltd.</i>	<i>Rs. 27,00,000/-</i>
<i>Shri Mahesh Pant</i>	<i>Rs. 10,00,000/-</i>

9.1. Accordingly, he required the assessee to justify the said expense. For ready reference the questions raised by the AO and the reply of the assessee taken into consideration by the AO are reproduced hereunder for the sake of completeness :

2.1. *The assessee was asked to file justification for non charging of interest on advances. Vide reply dated 05.01.2015, the assessee has submitted as under:*

"Interest has not been received since the amount given is short term in nature and the amount have already been received back by the company in further year."

2.2 *The justification filed by the assessee was not considered satisfactory another opportunity was provided vide questionnaire dated 08.12.2015 as reproduced below:*

"The justification with regard to advancing of the above loans vide reply dated 05.10.2015 is not considered satisfactory and is therefore, not acceptable.

Neither any interest has been charged from these advances nor has the business purpose been proved for making these advances. Please explain as to why the proportionate interest may not be disallowed u/s 36 (i) (III) out of interest paid to banks,"

The assessee has filed another explanation vide reply dated 21.01.2016 as under:

1. *In respect of advance paid to Shiksha bharti foundation amounting to Rs.50,00,000/-the company for the promotion of its sales paid the amount to the foundation '-or procuring tender business by the said foundation. During the F.Y.. 2012-13 the tender was under process since the amount was paid for the purpose of the business, the advance is justified. "*

No such documentary evidence regarding filing of the said tender has been filed. Commercial expediency for tiling of the said tender is not proved. The argument of the assessee is devoid of merits, hence rejected.

"2. *In respect of advance against land amounting to (Rs 10.00.000/-) the assessee has paid Advance for the purchase of land. The registration of the land in favour of the company was made in subsequent year The land was purchased for the purpose of constructing the godown for storage purpose of its business goods'*

No such documentary evidence regarding the said land has been filed. It is also not proved that the said land is to be used for the business of the assessee. the argument of the assessee is devoid of merits, hence rejected.

"3. *In respect of amount paid to Mr. Prateek Saleeja amounting to Rs. 15 Lac, the amount was paid for the purpose of purchase of land in the name of Mr. Prateek Sateeja for opening of new office at Zirakapur the amount was given purely for the purpose of business the assessee and amount of advance is justified*

No such evidence regarding opening of the said office has been filed. Commercial expediency of the transaction is not proved . The argument of the assessee is devoid of merits, hence rejected.

"4. *In respect of amount given to Umnesh Developers Pvt. Ltd. amounting to Rs.27 lac. the amount was paid for the purpose of purchase of land at Zirakpur 'for opening new avenues of business and constructing sale outlet. The nature of advance is purely for the purpose of business of the assessee and is instilled. "*

No such evidence regarding opening of the said avenue has been filed. Commercial expediency of the transaction is not proved. The argument of the assessee is devoid of merits, hence rejected..

5. *In respect of amount paid to Mr. Anil Modi, the Amount was paid earlier year was working as employee of the company. The amount WAS in the nature of advances to staff."*

No such evidence has been filed. The argument of the assessee is devoid of merits, hence rejected.

6. *In respect of amount paid to Sh.Mahesh Pant amounting Rs.10 lac. the amount was given as security for procuring his paper manufacturing until*

No such evidence has been filed. The argument of the assessee is Lac. devoid of merit, Hence rejected.

Another explanation has been filed by the assessee vide reply tiled on 22.01.2016 as under:

"further, in addition to submission made in the previous hearing with regard to amount of advance. it is submitted that the assessee has raised share capital and interest free unsecured loans during the year to the tune of Rs.37,05,000/-

The assessee has filed 3 explanations in this regard as discussed above but failed to prove the commercial expediency of the said advances,

With regard to availability of the share capital and interest free unsecured loans, it is also noteworthy) that the assessee has purchased land during the year under consideration on different dates for a consideration of Rs.2.46.79.136 assessee."

10. Not convinced with the explanation offered, the AO made a disallowance holding as under :

The assessee has paid interest to bank and unsecured loans but on the other hand Given interest free advances to the persons detailed above. Therefore, the assessee was asked to explain why the interest paid on its loans should not be disallowed to the extent of interest Attributable to the interest free advance given lo the persons detailed us 36 (1) (iii) of IT Act 1961. The explanation filed by the assessee in each case has been discussed above. It cannot be the case that on the one hand assessee is borrowing interest hearing funds and on the other, Advancing the same to persons for non business purposes without charging any interest. The Assessee has not been able to establish the business nexus or the commercial expediency for Advancing the said advances, therefore, interest a 12% is disallowed out of interest paid to bank and to unsecured loans to the extent of interest not charged on the advances given to Person as detailed below:-

S.No.	Name of Person	Amount of advance	Interest @ 12% p.a.
1.	Shiksha Bharti Foundation	50,00,000/-	4,89,836/-
2.	Advance against land (Sh FojaSingh	10,00,000/-	96,393/-
3.	Shri. Parteek Satija	15,00,000/-	40,000/-
4.	Shri.Anil Modi	1,00,000/-	12,000/-
5.	M/S Umesh Developers Pvt. Ltd.	27,00,000/-	45,409/-
6.	Sh.Mahesh Pant	10,00,000/-	59,835/-
	Total		7,43,473/-

11. The issue was carried in appeal before the CIT(A) wherein it was claimed that the funds were advanced from the assessee's own available funds and no part of the advances were made out of the borrowed funds. Apart from that, it was also submitted that the funds advanced were for the business purposes in as much as for procuring tender business from the Foundation of Shiksha Bharati etc.

12. However, the submissions advanced were dismissed by the CIT(A) holding as under :

8.2 I have gone through the facts of the case and the written submissions filed by the appellant. In this regard, the AR of the appellant has claimed that the advances were given for business purposes and that the same were received back in future years. It is observed that the appellant had given the same submissions during the course of

*assessment proceedings but the AO did not **accept the contention of the appellant due to lack of any documentary evidence provided in support of its contention.** The AR of the appellant has failed to submit any documentary evidence in support of its claims during the appellate proceedings also. In the absence of any documentary evidence, the contention of the AR of the appellant that the advances were for business purposes cannot be verified. In view of the above, the addition made by the AO in this regard is upheld. This ground of appeal is dismissed.*

(emphasis supplied)

13. On a reading of the aforesaid finding of the CIT(A), it is evident that the claims made by the assessee were not supported by documentary evidence.

14. The Id. AR submitted that infact in the facts of the present case the assessee has not been properly advised in as much as the assessee was under a belief that the submission that the advances were for business purposes by itself was sufficient and the necessity of filing supporting documentary evidences, was not made known to the assessee. The said requirement/shortcoming was not confronted to the assessee by the the CIT(A) also. Accordingly, it was his humble request that the issue may be remanded in order to afford the assessee an opportunity to file fresh supporting evidences. It was his submission that since these supporting evidences are not available to the AO also, the remand may be made to the AO and not the CIT(A) as the correctness of the evidences will be required to be first seen by the AO. The Id. AR further gave his oral understanding that assessee shall not abuse the trust reposed in case of a remand.

15. The Id. Sr.DR though placed reliance upon the impugned order however, agreed that the matter may be remanded to the AO and not the CIT(A) as admittedly fresh evidences will be needed to be considered by the AO first.

16. I have heard the rival submissions and perused the material available on record. It is seen that in the facts of the present case though an explanation was offered however, the assessee failed to utilize the statutory opportunity of appeal provided effectively as supporting evidences were not filed. In the light of the submissions of the parties before the Bench and noting that since the issue is a recurring issue for the two years concerned,

thus it would be in the interests of justice to take on record the relevant and necessary evidences. Accordingly, accepting the oral undertaking given by the ld. AR, the issue is remanded back to the AO with a direction to pass a speaking order in accordance with law. It is hoped that the assessee shall not abuse the trust reposed. It is made clear that in the eventuality of abuse of the same, the AO shall be at liberty to pass an order on the basis of material available on record. Said order was pronounced in the Open Court at the time of hearing itself.

17. Ground No. 2 in the remaining two appeals i.e. ITA 1533/CHD/2018 & ITA 1534/CHD/2018 is identical to ground No. 1 raised in ITA 1532/CHD/2018 wherein the claim of higher depreciation for self owned tempos and trucks etc. has been rejected. For the reasons as given in ITA 1532/CHD/2018 ground No. 2 in these two appeals is also dismissed. Said order was pronounced in the Open Court at the time of hearing itself.

18. In the result ITA 1532/CHD/2018 is dismissed and ITA 1533 & 1534/CHD/2018 are partly allowed for statistical purposes. .

Order pronounced in the Open Court on 26th June,2019.

Sd/-
(दिवा सिंह)
(DIVA SINGH)
न्यायिक सदस्य/Judicial Member

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