

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, "ए" चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A', CHANDIGARH

श्री एन. के. सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य
BEFORE SHRI N.K. SAINI, VICE PRESIDENT &
SHRISANJAY GARG, JUDICIAL MEMBER

आयकरअपीलसं./ITA No. 1420/CHD/2017

निर्धारणवर्ष / Assessment Year : 2013-14

M/s Cadchem Laboratories Ltd., Shed No. 1060, Industrial Area-II, Chandigarh	Vs. बनाम	The DCIT, Circle 1(1) Chandigarh
स्थायीलेखासं./PAN NO: AAACC7895J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे/Assessee by : Sh. Sudhir Sehgal, Advocate

राजस्वकीओरसे/ Revenue by : Sh. Modit Srivastava, Sr. DR

सुनवाईकीतारीख/Date of Hearing : 10.06.2019

उद्घोषणाकीतारीख/Date of Pronouncement : 11.07.2019

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 05.04.2017 of the Commissioner of Income Tax (Appeals)-I, Chandigarh [hereinafter referred to as CIT(A)].

2. The appeal is barred by limitation period of 74 days. A separate application for condonation of delay has been filed, wherein, it has been pleaded that the delay in filing the appeal has occurred because of the some mistake on the part of Shri Jagdip Singh, Accountant of the

assessee company as he misplaced the copy of the impugned order of the CIT(A). The averments made in the application have been supported / corroborated with the affidavit of the Shri Naveen Gupta, director of the assessee company as well as Shri Jagdip Singh, Accountant of the company. Considering the averments made in the application as well as the affidavits of the director and accountant of the company, there seems a reasonable cause for delay in filing the present appeal. The delay in filing the present appeal is, therefore, condoned.

3. Now coming to the merits of the case, the assessee in this appeal has taken the following grounds of appeal:-

1. *That the Worthy CIT(A) has erred in confirming the addition of Rs.1,22,920/- on account of capitalization of interest on capital work in progress.*
2. *That the Worthy CIT(A) has erred in making the addition of Rs. 22 lacs on account of alleged unexplained cash credits in the name of M/s Reliable Realtech Pvt. Ltd, for which, the necessary confirmation and other documents to prove the genuineness have been filed before the authorities below.*
3. *That the addition have been confirmed against the facts and circumstances of the case.*
4. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*

5. **Ground No.1:** The assessee vide ground No.1 has agitated the addition of Rs. 1,22,920/- made by the Assessing Officer on account of

disallowance of the interest u/s 36(1)(iii) of the Income Tax Act, 1961 (in short 'the Act') in respect to the investment made on Capital Work in Progress (CWIP).

6. The brief facts relating to the issue are that there was a CWIP of Rs. 11,38,147/- at the end of the year. The Assessing Officer further observed that there were huge borrowed funds in the balance sheet on which the assessee had paid substantial interest. He, accordingly, calculated the proportionate interest @ 12% on the CWIP and disallowed the same and accordingly made the addition of Rs. 1,22,920/- into the income of the assessee. Being aggrieved by the order of the Assessing Officer on this issue, the assessee preferred appeal before the Ld. CIT(A) and pleaded that the assessee had three types of secured loans. Firstly, was the car loan which was used for specific purpose for purchase of car; the second loan was short term which was out of cash credit limit and was used for working capital requirement of the assessee. The amount from the cash credit limit was not used for acquiring any fixed assets. The third loan amounting to Rs. 2,92,42,704/- was term loan from the PNB. In respect of the said term loan, it was pleaded before the CIT(A) that though the term loan was exclusively related to acquire fixed assets, however, the assessee submitted that the total assets of the assessee were at Rs. 9,98,86,088/- out of which the capital work in progress at the opening of the year was

just Rs. 11,38,147/- which was just 1.14% of the total assets. The Ld. Counsel, therefore, pleaded that the entire term loan should be proportionately appropriated towards the entire assets, and in this way since the opening CWIP was just 1.14% of the total assets, hence, the proportionate disallowance of interest would come as per calculation submitted by the assessee to the CIT(A), at Rs. 20,479/-. The Ld. CIT(A), however, did not agree with the above contention of the assessee and noted that the Assessing Officer has rightly calculated the disallowance u/s 36(1)(iii) on proportionate basis on the amount used for CWIP.

7. We have considered the rival contentions. The Ld. Counsel for the assessee has submitted that the car loan as well as the Cash Credit limit was used of specific purposes and that the assessee did not use the loan taken for specific propose for the CWIP. Regarding the term loan, the Ld. Counsel for the assessee has reiterated the submissions as were made before the CIT(A).

We do not agree with the above contention of the Ld. Counsel for the assessee. A perusal of the balance sheet of the assessee reveals that the assessee during the year had taken unsecured loans / interest bearing loan of Rs. 84170175.58 from the banks. The loan and advances made by the assessee at the end of the year were of Rs. 85591716.58. The own capital of the assessee is not sufficient either to meet the loan and

advances or to meet the capital work in progress. It is admitted case of the assessee that the term loan was used for acquisition of the capital assets.

In view of this, the Assessing Officer rightly calculated the proportional disallowance of the amount of CWIP. There is no justification to distribute the entire term loan amount over the total assets.

In view of this, we do not find any merit in this ground of the appeal and the same is accordingly dismissed.

8. **Ground No.2** : The assessee vide ground No.2 has contested the addition of Rs. 22 lacs made by the Assessing Officer and confirmed by the Ld. CIT(A) on account of share application money received by the assessee during the year which has been treated by the lower authorities as unexplained cash credits.

9. The brief facts relating to the issue are that the Assessing Officer noted that the assessee had received share application money of Rs. 22 lacs from M/s Reliable Realtech Pvt Ltd. The Assessing Officer required the assessee to furnish the necessary details to prove the genuineness of the transactions and identity and financial capacity of the investor to make the aforesaid investment. The assessee furnished the income- tax returns of the investor, PAN numbers and statement of

financials of the investor to prove the identity and financial capacity of the investor. The assessee also furnished confirmation from the investor to prove the genuineness of the transactions, however, the Assessing Officer observed that the assessee had failed to produce the bank account statement of the investor company from which the funds were transferred. He further observed that even the investor company had shown loss in the return of income. He, therefore, observed that since the investor was a loss making company and even the assessee had failed to furnish the bank account statement of the said company to establish the source of investment, therefore, the genuineness of the transactions was not proved. He, accordingly, added the aforesaid amount of Rs. 22 lacs as unexplained credits in the bank account of the assessee u/s 68 of the Act.

In appeal before the Ld. CIT(A), the assessee submitted the following additional documents :-

- a. Bank statement of M/s Reliable Realtech P Ltd depicting the funds paid by the lender out of available business limit.*
- b. Financials of M/s Reliable Realtech P Ltd regarding availability of funds to the tune of Rs. 2,75,96,619/-.*
- c. Confirmations from M/s Reliable Realtech regarding repayment of such amount.*
- d. Bank statement of assessee out of which the payment was repaid in next years.*

10. However, the Ld. CIT(A) held that since the investor company was a loss making company, hence, it did not seem probable that such a company would have invested amount in question in the assessee company. He, accordingly, confirmed the addition made by the Assessing Officer.

11. We have heard the rival contentions of the Ld. Representatives of the parties. In this case, the assessee apart from filing the confirmation from the investor company has also produced on file the Income-tax returns and PAN numbers of the investor and statement of the financials of the Investor to prove the identity and financial capacity of the Investor. However, to prove the genuineness of the transactions, the assessee also filed conformation from the Investor regarding the investment made by it in the assessee company. During the appellate proceedings before the CIT(A), the assessee also furnished bank statement of 'M/s Reliable Realtech P Ltd.' depicting that the funds were paid by the said company out of its available business limit. The assessee also proved from the financials of the investor that it was possessed of sufficient funds to make investment in the assessee company. Apart from that the assessee also placed on file the bank statement of the assessee to show that the payments were repaid to the Investor in the next year. In our view, the aforesaid documents were sufficient to prove the identity, financial capacity as well as the genuineness of the transactions. The Ld. CIT(A) has confirmed the

addition on just assumption and presumption basis without pointing out any suspicious circumstance or rebuttal to the evidence furnished by the assessee. We, therefore, do not find any justification on the part of the CIT(A) in confirming the addition made by the Assessing Officer on this issue.

The addition made by the lower authorities of Rs. 22 lacs u/s 68 of the Act is, therefore, ordered to be deleted.

12. **Ground Nos. 3 & 4:** These grounds are general in nature and do not require and specific adjudication.

In view of our findings given above, the appeal of the assessee is treated as partly allowed.

Order pronounced in the Open Court on 11.07.2019.

Sd/-
(एन. के. सैनी / N.K. SAINI)
उपाध्यक्ष /Vice President
Dated : 11.07.2019
“आर.के.”

Sd/-
(संजय गर्ग / SANJAY GARG)
न्यायिकसदस्य/ Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar

