



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK 'SMC' BENCH, CUTTACK**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**

**ITA No.106/CTK/2019**  
Assessment Year: 2015-16

Orissa Transformer Pvt Ltd., S-3/73, Mancheswar Industrial Estate, Bhubaneswar.	Vs.	DCIT, Circle 1(2), Bhubaneswar
PAN/GIR No.		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri P.S.Panda, AR  
Revenue by : Shri Subhendu Dutta, DR

**Date of Hearing : 23 /07/ 2019**  
**Date of Pronouncement : 25 /07/ 2019**

**ORDER**

This is an appeal filed by the assessee against the order of the Commissioner of Income Tax(Appeals)-1, Bhubaneswar dated for the assessment year 2013-14.

2. The sole issue involved in this appeal is that the Commissioner of Income Tax(Appeals), Cuttack was not justified in confirming the disallowance of interest of Rs.4,79,514/-.

3. The facts in brief are that the assessee is a Pvt. Ltd. Company engaged in the business of manufacturing and repairing of transformers. It filed the return of income on 29.09.2015 declaring taxable income of Rs. 38,46,160/-. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has debited an amount of Rs.72,37,142/- in the profit and loss account towards finance cost, which includes interest on unsecured loan from Directors @ 15% and interest towards loans availed

from Bank @ 13.75%. He also observed that in the preceding assessment year, the assessee had availed loan from bank @ 10.40%. It was in this backdrop that the Assessing Officer observed that the interest paid to Directors is higher than the interest paid to bank and hence, there was no need to take loan from the Directors at a higher rate of interest. Therefore, he disallowed Rs.4,79,514/- u/s.37(1) of the Act and added the same to the income of the assessee.

4. Being aggrieved with the assessment order, the assessee carried the matter in appeal before Ld. CIT(A) but without any success. The CIT(A) confirmed the action of the Assessing Officer, inter alia, by observing as under:

*"I have considered the matter. In its rejoinder dt. 19.02.2019, the AR has stated that the appellant has already given its submission and it has not submitted any evidence other than the justification for charging interest on unsecured loan @15%. It is seen that the Statutory Auditor has stated that the appellant has availed cash credit loan from bank @13.75%. In the preceding previous year the appellant also had availed loan from bank @ 10.40%. The AO found that taking into account interest charged by the banks, interest paid to the Directors @ 15% was high and unreasonable. Further, in the balance sheet the appellant has shown cash and cash equivalents at Rs. 1,41,63,218/-whereas the appellant has received net loan from the directors at Rs. 41,00,801/- during the year. Considering the interest charged by the banks and needs of the business of appellant, interest @13.75% on unsecured loan from directors is reasonable. Hence, I find no reason to interfere with the disallowance of interest made by the AO at Rs. 4,79,514/- U/s 37(1) of the act. Hence the disallowance of Rs. 4,79,514/- is confirmed."*

5. Hence, this appeal filed by the assessee.

6. At the time of hearing, Id A.R. of the assessee produced details of interest on unsecured loan of Rs. 57,54,172/- placed in the paper book and submitted that loan was availed from its directors and shareholders for the purpose of the business, which is evident from the audited accounts, a copy of the same is also filed in the paper book. He submitted that the assessee

has also availed cash credit loan from bank as on 31.03.2015 was Rs. 1.36 cr. which was not adequate to meet the business requirement. Besides the cash credit loan, the assessee has also availed bank guarantee facility of Rs. 390.00 lakhs. Since, the funds availed from bank was not sufficient and it was difficult to give the security and other requirements of the bank to enhance the loan amount, therefore, to meet the business requirement, the assessee had to take loan from its Directors and Shareholders @15%.

7. He submitted that the all the shareholders who have provided the loan to the assessee are assessed to income tax. He submitted that the bank levied the interest on monthly rest whereas the interest is charged on unsecured loan on annual basis. Considering the annualized interest on Cash Credit loan availed from the bank, it will be around 14.65% as against which the assessee is paying 15% on the unsecured loan. Hence, it is evident that the interest charged by the unsecured lenders is not on higher side. Ld A.R. submitted that the assessee had kept Rs. 1,24,18,458/- in FDR, which is utilized for various business purposes like margin money for Bank Guarantee, security deposit etc. He submitted that there is no nexus between the unsecured loan received during the year and investment made in FDR. He also referred to the audited accounts and from this, he submitted that the investment in FDR has reduced from Rs.1.39 Crore to Rs.1.24 Crore. Hence the allegation made by the Assessing Officer that the assessee has received net loan of Rs. 41,00,801/- during the year which has bearing on the cash and cash equivalents as on balance sheet date at Rs. 1,41,63,218/- is not correct.

8. Replying to above, Id D.R. submitted if the interest rate @ 15% paid to shareholders and interest rate charged by the bank @ 13.75% is compared, then, the assessee has paid more interest on the unsecured

loan, therefore, both the authorities below are justified in disallowing the same.

9. I have heard the rival submissions, perused the record of the case and the paper book filed by the assessee in the form of details of interest on unsecured loan and audited accounts. It is not in dispute that the assessee has availed bank loans @ 13.75% to meet the business need of the assessee. It is also not in dispute that the assessee has also availed as unsecured loan from its Directors and shareholders @ 15% to meet its business necessity. Another aspect has to be considered that when the assessee will avail loan from the bank and also to enhance the cash credit, it has to give mortgage in any form as per the satisfaction of the bank, viz, margin money, bank guarantee, etc besides the processing fees. With unsecured business loans, borrowers avoid the risk of putting valuable assets on the line for financing, but lenders make up for their increased risk by charging higher interest rates, requiring personal guarantees, filing liens, or doing all of the above. Hence, by putting a meagre interest, the assessee has to avoid all these factors. With unsecured loans, nothing specific has been pledged as collateral. Lenders, on the other hand, take more risk with unsecured personal loans. I also find force in the submission of Id A.R. of the assessee that if the annualized interest on cash credit loan is considered, then it will be around 14.65% per annum. Considering the totality of facts and circumstances of the case, I am of the considered view that by paying interest rate @ 15% on secured loan than the annualized rate of 14.65% to bank, the assessee has borrowed the loan from its Directors/shareholders to meet its legitimate business need and, therefore, no addition is called for. In view of above, I direct the Assessing Officer to delete Rs.4,79,514/- and allow this ground of appeal of the assessee.

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

Order pronounced on 25/07/2019.

Sd/-

**(Chandra Mohan Garg)**  
**JUDICIALMEMBER**

Cuttack; Dated 25 /07/209

B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : Orissa Transformer Pvt Ltd., S-3/73, Mancheswar Industrial Estate, Bhubaneswar
2. The Respondent. DCIT, Circle 1(2), Bhubaneswar
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT- 1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

Sr. Pvt. Secretary,  
ITAT, Cuttack