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

**श्रीमती दिवा सिंह, न्यायकि सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य**
**BEFORE SMT.DIVA SINGH, JUDICIAL MEMBER**
**AND SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

आयकर अपील सं./ **ITA Nos.1014 to 1016/Chd/2017**
निर्धारण वर्ष / Assessment Years : 2011-12 to 2013-14

| | | |
|---|---|---|
| M/s Kapsons Fashion Private Ltd., SCO 104-105, Sector 17C, Chandigarh. | बनाम | The A.C.I.T. Circle-2(1), Chandigarh. |
| स्थायी लेखा सं./PAN NO: AACCK3369D | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

निर्धारिती की ओर से/Assessee by: Shri Jaspal Sharma, Adv.
राजस्व की ओर से/ Revenue by: Smt.Chanderkanta, Sr.DR

सुनवाई की तारीख/Date of Hearing : 06.08.2019
उदघोषणा की तारीख/Date of Pronouncement: 29.08.2019

## आदेश/ORDER

**PER BENCH:**

All the above appeals have been preferred by the same assessee , against separate orders of the Commissioner of Income Tax (Appeals)-I, Chandigarh [(in short 'CIT(A)'] dated 26.4.2017, 7.3.2017 & 26.4.2017 ,relating to assessment years 2011-12 to 2013-14 respectively, passed u/s 250(6) of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

At the outset it was stated by both the parties that common issues were involved in all the appeals.All the appeals were therefore taken up together for hearing and are being disposed off by this common consolidated order.

We shall first be dealing with the appeal of the assessee in ITA No.1014/Chd/2017 relating to A.Y 2011-12.

**ITA No.1014/Chd/2017(A.Y. 2011-12):**

2. Ground Nos.1 and 9, it was stated by the Ld.Counsel for the assessee, were general in nature. The same therefore need no adjudication.

3. Ground No.2 raised by the assessee reads as under:

> *"2. On the facts and circumstances of the case, the learned CIT(A) has erred , both on facts and in law in having confirmed the addition of Rs.3,92,453/- made to the income of the appellant being the difference in the amounts of commission and interest received as per form No. 26AS and as accounted for in the books of accounts of the appellant."*

4. Briefly stated, the issue relates to addition made on account of difference in income as reflected in the Annual statement of tax deducted at source of the assessee in Form No.26AS and that reflected in the books of the assessee, amounting to Rs.3,92,453/-. Ld.Counsel for the assessee contended that despite pointing out the specific reason for

the difference, the Ld.CIT(A) had upheld the addition without dealing with the specific factual submissions made before him. Ld.Counsel for the assessee contended that it was pointed out to the Ld.CIT(A) and even the Assessing Officer (A.0),that the assessee had earned commission income on sale of garments of a party made on consignment basis. That the assessee was to be reimbursed the VAT component of the sales made on behalf of the said party alongwith commission. That accordingly bill was raised on the said party for both the commission and VAT reimbursement and though the said party was required to deduct TDS only on the commission, It deducted the same on the VAT component also. Accordingly VAT reimbursed was also disclosed as income on which TDS was deducted. though it was not in the nature of income of the assessee. That for the aforesaid reason there arose difference in the income returned by the assessee and that shown in Form 26AS.Our attention was drawn to the submissions made by the assessee in this regard before the CIT(A) reproduced at para 4.1 of the order as under:

> *"The facts in brief are that during the course of assessment proceedings, the appellant was required to reconcile the income/payments which were reflected in Form NBo.26AS with the corresponding entries/income shown in the books*

*of the appellant. Necessary reconciliation along with the explanation was submitted. However, the AO was not satisfied with the explanation of the appellant and made an addition of Rs. 3,78,337/~ to the income of the appellant being the difference in the receipts from M/s Priority Marketing Put, Ltd, (Supplier of readymade garments) to the tune of Rs. 2,22,673/- and from M/s Mohan Clothing Co. Put. Ltd. (Supplier of readymade garments) to the tune of Rs. 1,69,780/- respectively and as reflected inform NO. 26AS and the books of the appellant.*

*In this regard, it is submitted, that a statement showing the difference in the amounts as reflected in the payments inform No. 26AS and as shown in the books of the appellant was submitted during the course of assessment proceedings which forms Annexure 'B' of the assessment order itself. As per this statement there was a difference of Rs. 2,22,673/- in the payments received from M/s Priority Marketing Put. Ltd and Rs. 1,69,780 in the payments of M/s Mohan Clothing Co. Put Ltd. Subsequently, a revised statement (Annexure 'A' forming part of assessment order) was also furnished to the Assessing Officer showing the nil difference in the payments received from the above persons as reflected inform No. 26 and as per the books of the appellant. The reasons for filing the revised statement where no difference in the payments as per form No. 26AS and as per the books was shown in these two accounts was that the appellant was selling the goods of M/s Priority Marketing Put. Ltd. the on consignment basis. As per the arrangement with this company, the appellant was to receive commission on sales as also the vat paid on their behalf. A consolidated bill for the commission as well as vat charges was issued by the appellant to this supplier. However, instead of deducing TDS on commission only the supplier have deducted TDS on vat reimbursed in some cases because of oversight as a single bill for the commission and vat recoverable was raised by the appellant."*

5. The Ld.Counsel for the assessee contended that the CIT(A) did not even consider the contention of the assessee and wrongly held that the assessee had not been able to

explain the reason in the difference. Our attention was drawn to the findings of the Ld.CIT(A) at para 4.2 of the order as under:

> *"4.2 I have examined the issue in detail. The Assessing Officer has rightly applied the section. The income is charged to tax in the year the right to that income has accrued or arisen as per section 5 of the Act.The Assessing Officer has taxed the amount in this year as mercantile system is being followed by the appellant. The appellant has not been able to explain the exact reasons for difference between the two amounts listed in Form 26AS and income tax return. In reply it is stated that the reason may be because the deductor has deducted on consolidated amount. The appellant is not sure. The addition is confirmed and Ground of appeal No.2 is dismissed"*

6. The Ld. DR, on the other hand, relied upon the order of the authorities below.

7. We have heard the rival contentions and carefully gone through the orders of the authorities below. We find merit in the contentions of the Ld.Counsel for the assessee that due explanation for the difference in the income reflected in Form No.26AS and that shown in the books of account was given by the assessee. We have taken note of the submissions made by the assessee before the Ld.CIT(A) stating that in fact, there was no difference in the income and TDS had been deducted on the service tax component of

certain bills raised which was not in the nature of income. A detail explaining the difference as above was also filed. But, we have noted from the order of the Ld.CIT(A), that no cognizance of the same has been taken while adjudicating the issue. The Ld.CIT(A) has in fact summarily dismissed the ground raised by the assessee without dealing with the factual contentions made before him. The findings of the Ld.CIT(A) that the assessee himself was not sure about the explanation being correct or not, we find, is ill conceived since the written submissions of the assessee, reproduced in the order of the CIT(A) show that specific detailed submissions had been made and nowhere the assessee has expressed uncertainty about his explanation. Since the factual contentions of the assessee need verification, we consider it fit to restore the issue back to the AO to verify the contentions made by the assessee and thereafter adjudicate the same in accordance with law. Needless to add the assessee be granted due opportunity of hearing.

The ground of appeal No.2 raised by the assessee is allowed for statistical purposes.

8. Ground No.3 raised by the assessee reads as under:

*"3. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the disallowance of an amount of Rs 4,01,065/- under section 36(1)(iii) being the amount of interest paid on bank loan taken for acquiring of assets not put to use in the year under reference."*

9. Brief facts relating to the issue are that the AO noted that the assessee had opened eight new stores during the year and done renovation/alteration in them and also furnished them. He further noted that the term loan has been taken from bank for the same on which interest had been paid and claimed as revenue expenditure. The AO noted that interest expenditure pertaining to loans used for acquiring new assets, had to be capitalized till the asset was put to use, as per the provisions of section 36(1)(iii) of the Act. Accordingly, the AO disallowed the proportionate interest paid on loans used for acquiring assets/shops not put to use during the year, which was calculated at Rs.4,01,065/-.

10. The Ld.CIT(A) upheld the disallowance made by the AO.

11. Before us the Ld.Counsel for the assessee pointed out that identical disallowance had been made in the case of the sister concern of the assessee, M/s Kapsons Agencies Private Limited in A.Y 2010-11,2011-12 & 2013-14 and the

matter had travelled upto the ITAT. It was pointed out that the said assessee had challenged the disallowance in ground No.2&3 of its appeal filed before the ITAT, in ITA No.1010 & 1011/Chd/2017, which had been heard on 18.07.2019. It was contended that in those cases the assessee had pleaded that it had not purchased any shops and that the entire expenditure related only to renovation of shops which was released by way of loan by the bank only after incurring the expenses. That therefore the interest paid on the loans pertained to the period after the asset was put to use and therefore there was no occasion for making any disallowance of interest u/s 36(1)(iii) of the Act. It was pointed out that additional evidences to substantiate the contention was also filed alongwith an application seeking admission of the same stating that they could not be filed earlier since the documents had got misplaced on shifting the office of the assessee.

12. Ld.Counsel contended that its arguments in the impugned ground were identical to that in the case of the sister concern of the assessee M/s Kapsons Agencies (supra).

13. Ld.DR conceded that the issue was identical to that of the sister concern as stated by the Ld.Counsel for the assessee.

14. We have heard the contentions of both the parties. It is an admitted fact that the issue raised in the above ground is identical to that raised in ITA No.1010/Chd/2017(supra) in ground No.2. We have gone through the order passed in that case which was pronounced on 23-08-19. The issue , we find ,has been dealt with at para 8 &9 of the order ,admitting the additional evidences and thereafter restoring the matter back to the AO for verifying the facts of the case and adjudicating the issue afresh in accordance with law. The said decision will squarely apply to the present case also, following which we restore the issue back to the AO to be decided afresh in accordance with law ,as per the directions given in the case of M/s Kapsons Agencies (supra) in ITA No.1010/Chd/2017 (supra).

This ground of appeal No.3 is allowed for statistical purposes.

15. Ground of appeal No.4 raised by the assessee reads as under:

> *"4. (I) On the facts and circumstances of the case, the CIT (Appeals) has erred in having confirmed additions of Rs.1,59,572/- and Rs.1,24,782/- being the amount of expenditure incurred by the appellant towards rent by holding that as the expenditure incurred related to earlier assessment year, the same could not be allowed in the year under reference as the appellant was following mercantile system of accounting whereas the liability to pay the same crystallized in the year under reference itself."*

16. Brief facts relevant to the issue are that the AO on perusal of the Profit & Loss Account of the assessee and details attached thereto found that the assessee had claimed the following expenditures pertaining to preceding year:

a) rent paid to M/s Alpha G. Corp. Development Pvt. Ltd. being for the month of March, 2010 amounting to Rs.1,59,572/- and

b) CAM charges paid to M/s Para Re-facilities for the month of March, 2010 amounting to Rs.1,24,782/-.

17. The AO accordingly disallowed the said expenditure holding them to be prior period expenses. The same was upheld by the Ld.CIT(A) stating that the assessee was following mercantile system of accounting and therefore the prior period expenses could not be allowed.

18. Before us the Ld.Counsel for the assessee pointed out that identical disallowance had been made in the case of the sister concern of the assessee, M/s Kapsons Agencies

Private Limited in A.Y 2011-12 and the matter had travelled upto the ITAT. It was pointed out that the said assessee had challenged the issue in ground no.4 of the appeal filed in ITA No. 1011 /Chd/2017, which had been heard on 18.07.2019. It was contended that in the said case the assessee had pleaded that the expenses accrued and arose in the impugned year only on account of agreement for incurring the same entered into in this year. It was pointed out that additional evidences to substantiate the contention was also filed alongwith an application seeking admission of the same stating that they could not be filed earlier since the documents had got misplaced on shifting the office of the assessee.

19. Ld.Counsel contended that its arguments were identical to that in the case of the sister concern of the assessee M/s Kapsons Agencies (supra).

20. Ld.DR conceded that the issue was identical to that of the sister concern as stated by the Ld.Counsel for the assessee.

21. We have heard the contentions of both the parties. It is an admitted fact that the issue raised in the above ground

is identical to that raised in ITA No.1011/Chd/2017(supra) in ground No.4. We have gone through the order passed in that case which was pronounced on 23.08.2019. The issue , we find, has been dealt with at para 32 of the order, admitting the additional evidences and thereafter restoring the matter back to the AO for verifying the facts of the case and adjudicating the issue afresh in accordance with law. The said decision will squarely apply to the present case also, following which we restore the issue back to the AO to be decided afresh in accordance with law ,as per the directions given in the case of M/s Kapsons Agencies (supra) in ITA No.1011/Chd/2017 (supra).

Ground of appeal No.4 raised by the assessee is allowed for statistical purposes.

22. Ground of appeal No.5 raised by the assessee reads as under:

> *"5. On the facts and circumstances of the case, the learned CIT(Appeals) has erred in having confirmed disallowance of an amount of Rs.1,18,825/- being the amount of expenditure incurred on foreign travel of the Directors by treating the same as non business expenditure."*

23. The above ground raised relates to disallowance of foreign travel expenses of the Director of the assessee

company Shri Vipin Kapoor being on account of visit to China for the reason that the assessee was not able to establish and prove that the said expenses were incurred in connection with the business of the assessee.

24. The Ld.CIT(A) upheld the addition reiterating the findings of the AO that no evidence regarding the business purpose of foreign trip were filed by the assessee.

25. Before us the Ld.Counsel for the assessee pointed out that identical disallowance had been made in the case of the sister concern of the assessee, M/s Kapsons Agencies Private Limited in A.Y 2011-12 and the matter had travelled upto the ITAT. It was pointed out that the said assessee had contested the disallowance in ground no.5 raised in the appeal filed in ITA No. 1011 /Chd/2017, which had been heard on 18.07.2019. It was contended that in the said case the assessee had pleaded that the though the assessee was not in possession of any direct evidence to prove the business purpose of the trip but at the same time considering the nature of the business of the assessee dealing in selling branded cloths, the Directors are required to make visit to foreign countries for reviewing the foreign market trends and for making purchases and visiting

prospective suppliers of cloths and therefore the disallowance of the entire amount of foreign travel was totally unjustified.

26. Ld.Counsel contended that its arguments in the present case were identical to that in the case of the sister concern of the assessee M/s Kapsons Agencies (supra).

27. Ld.DR conceded that the issue was identical to that of the sister concern as stated by the Ld.Counsel for the assessee.

28. We have heard the contentions of both the parties. It is an admitted fact that the issue raised in the above ground is identical to that raised in ITA No.1011/Chd/2017(supra) in ground No.5. We have gone through the order passed in that case which was pronounced on 23-08-19. The issue, we find, has been dealt with at para 38 of the order, restricting the disallowance to 50% of the expenses. The said decision will squarely apply to the present case also, following which we restrict the disallowance of foreign travelling expenses to 50% of that incurred, as per the directions given in the case of M/s Kapsons Agencies (supra) in ITA No.1011/Chd/2017 (supra).

The ground of appeal No.5 raised by the assessee is partly allowed.

29. Ground No.6 raised by the assessee reads as under:

> *"6. On the facts and circumstances of the case, the learned CIT(Appeals) has erred in having confirmed disallowance of an amount of Rs. 8,53,062/- made by the Assessing officer by taking resort to the provisions of section 40(a)(ia) by holding that as no TDS was deducted out of the expenditure incurred on which TDS was deductable as per the provisions of the Act, the same was as such not an allowable expenditure.*

30. Briefly stated, the AO had made disallowance of the following expenses on finding that the assessee had failed to deduct tax at source on the same:

| *Head of Expenditure* | *Name of party* | |
|---|---|---|
| *Advertisement* | *Roshan Studios* | *32,450.00* |
| *Advertisement* | *Wire & Wireless* | *38,913.00* |
| *Advertisement* | *Synergy Media Entertainment* | *174,384.00* |
| *AMC* | *Cool Tech Corporation* | *35,394.00* |
| *Sales Promotion* | *Hotel Mountview* | *394,621.00* |
| *Events* | *Swastic Audio* | *77,300.00* |
| *Professional Charges* | *Kuldip Singh (Advocate)* | *100,000.00* |
| *Total* | | *8,53,062.00* |

31. The Ld.CIT(A) upheld the disallowance stating that the assessee had contested only two amounts before him being payment made to Roshan Studios and Wire & Wireless payment made to Hotel Mountview. He further held that on both the said amounts the contentions of the assessee were

not acceptable since TDS was deductible on the payment made to Roshan Studios since it exceeded the amount on which TDS was deductible and vis-à-vis the payment made to Hotel Mountview, he stated that it was in the nature of work contract and, therefore, rejected the assessee's contention that it was not so.

32. Before us the Ld.Counsel for the assessee contended that he had made specific submissions before the Ld.CIT(A), who had passed the order without specifically dealing with the contention of the assessee thus passing a non speaking order on the issue. The Ld.Counsel for the assessee drew our attention to the submissions made before the CIT(A) reproduced at para 8.1 of the order as under:

> *"Payment to Roshan Studios and Wire & Wireless amounting of Rs. 32,450/- and Rs. 38,913/- respectively have been made for photography/ providing of sound system at the time of opening of two stores of the appellant. There was no single contract with them and the amount paid was below the limit of Rs. 75,000/- on which TDS is required to be deducted as provided u/s 194C of the Act.*
>
> *Similarly, payment of Rs. 3,94,621 / - to Mount View has been made for booking of hall charges for organizing fashion show. This payment does not fall under the category of any work contract and as such, no TDS was required to be deducted for such payment as there was no single contract with the hotel*
>
> *In any case, no addition is called for in the hands of the appellant on account of non deduction of TDS in other cases as the expenditure were genuine and was incurred for*

*business expediency and were actually paid in the year under reference."*

33. Referring to the same it was contended that the assessee had pleaded before the Ld.CIT(A) that the payment made to hotel Mountview was for booking of hall charges for organizing fashion show and thus did not fall under the category of work contract and no TDS was required to be deducted on the same. Similarly, the Ld.Counsel for the assessee pointed out that it was pleaded before the Ld.CIT(A) that there was no single contract with Roshan Studios and Wire & Wireless and the amount paid was below the prescribed limit on which TDS was required to be deducted as per section 194C of the Act. The Ld.Counsel for the assessee contended that the Ld.CIT(A) had failed to deal with the specific contention of the assessee and has summarily dismissed the same without giving any proper reasons. He drew our attention to the finding of the CIT(A) at para 8.2 of the order as under:

*"8.2 I have considered the reply of the appellant and perused the order of the Assessing Officer. The appellant has contested only 2 amounts and not given reply with respect to others. As regards the payment to Roshan Studios, TDS was deductible because the annual payment exceeded the amount on which TDS is deductible. As regards the payment to Hotel Mountview, the expense has been booked under sales promotion and from the nature of expense it is a work contract in which*

*TDS was deductible. Hence, the order of the Assessing Officer on this issue is upheld and ground of appeal No. 6 is dismissed."*

34. The Ld. DR, on the other hand, relied upon the orders of the authorities below.

35. We have heard the rival contentions and have perused the orders of authorities below. We agree with the Ld.Counsel for the assessee that despite specific submissions made by the assessee, the Ld.CIT(A) has upheld the addition/disallowance ,giving no basis/reasoning for arriving at his findings that the nature of expense relating to Hotel Mountview was not in the nature of work contract as contended by the assessee, nor has he given any basis for stating that TDS was deductible on total payment made to Rohan studios and every payment made was not to be considered separately as pleaded by the assessee. The order passed by the Ld.CIT(A), is, we find, not a reasoned and speaking order on the issue. Since the facts pleaded by the assessee need verification, we consider it fit to restore the matter back to the AO to verify the contentions of the assessee and thereafter adjudicate the issue in accordance with law.

The ground of appeal No.6 is allowed for statistical purposes.

36. Ground No.7 raised by the assessee reads as under:

> *"7. On the facts and circumstances of the case, the learned CIT(Appeals) has erred in having confirmed disallowance of an amount of Rs. 1,28,000/- made by the Assessing officer by invoking the provisions of section 40A(3) of the Act."*

37. Brief facts relating to the issue are that the AO noted that the assessee had made payment for food and hospitality during cricket match on 30.3.2011 of Rs.1,28,000/- in cash. He held that the same was in violation of section 40A(3) of the Act and accordingly, disallowed the same. The Ld.CIT(A) upheld the disallowance so made by the AO.

38. Before us, the Ld.Counsel for the assessee contended that it had been explained to the authorities below that the expenditure had been incurred for buying tickets for cricket match and food for staff during cricket match and was not paid to any single party and therefore, the provisions of section 40A(3) of the Act were not attracted. The Ld.Counsel for the assessee pointed out that the Ld.CIT(A) without appreciating the contentions made, had summarily upheld the addition by simply stating that the purchases in cash

exceeded Rs.20,000/-, the disallowance had been rightly made.

39. The Ld. DR, on the other hand, relied upon the orders of authorities below.

40. We have heard the rival contentions and perused the orders of authorities below. We do not find any merit in the contentions of the Ld.Counsel for the assessee. The assessee, we have noted, has consistently pleaded that the payment was made in cash for purchasing tickets of cricket match for its staff/customers and for providing food to them during cricket match and that the payment was made to different vendors at the spot where the cricket match was conducted for buying food items. But no evidence has been filed to substantiate the same. Therefore the fact remains that the assessee has incurred expenditure in cash exceeding Rs.20,000/-, thus violating the provisions of section 40A(3) of the Act calling for disallowance of the same. The order of the Ld.CIT(A) ,upholding the disallowance of Rs.1,28,000/-,accordingly is upheld.

The ground of appeal No.7 raised by the assessee dismissed

41. Ground of appeal No.8 raised by the assessee reads as under:

> *"8. On the facts and circumstances of the case, the learned CIT(Appeals) has erred in having confirmed an addition of Rs. 1,16,000.00 being the amount of pre-paid expenses relating to the subsequent assessment year. In any case. In all fairness, directions should have been issued to allow this expenditure in the year to which the expenditure related."*

42. Brief facts relating to the issue are that the assessee had incurred the expenditure of Rs.1,74,000/- on account of music permission expense and the said amount had been paid for three years. On taking note of the aforesaid fact, the AO apportioned the expenses to three years and allowed the claim of only Rs.58,000/- for the impugned year disallowing the balance of Rs.1,16,000/-.

43. The Ld.CIT(A) upheld the disallowance made by the AO.

44. Before us the Ld.Counsel for the assessee contended that the payment had been made for acquiring the licence pertaining to music permission for three years and having incurred in the impugned year was allowable in the impugned year only. The Ld.Counsel for the assessee pointed out that this was not a capital expenditure and there were no provisions under the Act for deferment of

revenue expenditure and the same had to be allowed in the year in which it was incurred.

45. The Ld. DR, on the other hand, relied upon the order of the authorities below.

46. We have heard the rival contentions. It is not disputed that the expenditure incurred on acquiring music permission for a period of three years, was in the nature of revenue expenditure of the assessee. It is not the claim of the Revenue that the impugned expenditure was a capital expenditure. On the contrary, we find that the Revenue has accepted that it was in the nature of revenue expenditure but on finding that the permission pertained to three years, the expenditure was spread over three years and the claim allowed accordingly. The Ld. DR has been unable to controvert the contention of the Ld.Counsel for the assessee that having treated the expenses as revenue, the same was allowable in the impugned year and could not be deferred in the next two years. The Revenue has been unable to draw our attention to any provision under the Income Tax Act for deferring revenue expenditure. We, therefore, agree with the Ld.Counsel for the assessee that the said revenue expenses

were to be allowed in the impugned year itself. The claim of the assessee of Rs.1,16,000/- is, therefore, allowed.

The ground of appeal No.8 raised by the assessee is, therefore, allowed.

47. In effect, the appeal of the assessee is partly allowed for statistical purposes.

We now take up the appeal of the assessee in ITA No.1015/Chd/2017 relating to A.Y 2012-13

**ITA No.1015/Chd/2017(A.Y.2012-13):**

48. Ground of appeal No.1 and 8, it was stated by the Ld.Counsel for the assessee, were general in nature. the same therefore need no adjudication.

49. Ground of appeal No.2 raised by the assessee reads as under:

> *"2. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in having confirmed the addition of Rs.3,76,661/- made to the income of the appellant being the difference in the receipts as per form No. 26AS and as accounted for in the books of accounts of the appellant."*

50. The above ground relates to addition made on account of difference in income as per Form No.26AS and as per income tax return.

51. It was common ground that the issue raised in the present ground was identical to that raised in ground No. 2 of assessee's appeal for A.Y 2011-12, in ITA No.1014/Chd/2017 .

In view of the same, with the issue admittedly being identical to that raised in ground No.2 in ITA No.1014/Chd/2017, our decision rendered therein will squarely apply to the said ground also, following which we restore the issue back to the AO to decide the same afresh in accordance with our directions given at para 7 of our order above.

The ground of appeal No.2 is allowed for statistical purposes.

52. Ground of appeal No.3 raised by the assessee reads as under:

> *"3. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the disallowance of an amount of Rs 7,23,239/- under section 36(1)(iii) being the amount of interest paid on bank loan taken*

*for acquiring of assets not put to use in the year under reference."*

53. The above ground relates to disallowance of an amount of 7,23,299/- u/s 36(1)(iii) of the Act being the amount of interest paid on bank loan taken for acquiring of asset not put to use in the year under reference.

54. It was common ground that the issue raised in the present ground was identical to that raised in ground No. 3 of assessee's appeal for A.Y 2011-12, in ITA No.1014/Chd/2017 .

In view of the same, with the issue admittedly being identical to that raised in ground No.3 in ITA No.1014/Chd/2017, our decision rendered therein will squarely apply to the said ground also, following which we restore the issue back to the AO to decide the same afresh in accordance with our directions given at para 14 of our order above.

The ground of appeal No.3 is allowed for statistical purposes.

55. Ground No.4 raised by the assessee reads as under:

*"4. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in*

*having confirmed the allowance of depreciation on electrical installations and fittings at 10% instead of 15% as claimed by the appellant thereby confirming an addition of Rs. 11,64,638/-to the income of the appellant."*

56. The issue raised in the above ground relates to allowance of depreciation on electric installation & fittings @ 15% as claimed by the assessee as against 10% allowed by the revenue authorities.

57. At the outset itself the Ld.Counsel for the assessee pleaded that its solitary prayer on the impugned issue was that the claim of depreciation be allowed at the enhanced WDV after allowing depreciation @ 10% on the impugned assets. In view of the above, we direct the AO to recompute the claim of depreciation on the impugned assets at the prescribed rate in accordance with law. The ground of appeal No.4 raised by the assessee is dismissed with the above directions.

58. Ground of appeal No.5 raised by the assessee reads as under:

*"5. On the facts and circumstances of the case, the learned CIT(Appeals) has erred in having confirmed disallowance of an amount of Rs. 13,61,132/- being the amount of expenditure incurred on foreign travel of the Directors by treating the same as non business expenditure."*

59. The above ground relates to claim of foreign travel expenses incurred on the directors of the assessee company amounting to Rs.13,61,132/- which was entirely disallowed by the AO treating the same as non business expenses in the absence of any evidence furnished by the assessee for its claim.

60. It was common ground that the issue raised in the present ground was identical to that raised in ground No. 5 of assessee's appeal for A.Y 2011-12, in ITA No.1014/Chd/2017 .

61. In view of the same, with the issue admittedly being identical to that raised in ground No.5 in ITA No.1014/Chd/2017, our decision rendered therein will squarely apply to the said ground also, following which we restrict the disallowance to 50% of the expenses ,in accordance with our directions given at para 28 of our order above.

The ground of appeal No.5 is partly allowed.

62. Ground of appeal No.6 raised by the assessee reads as under:

*"6. On the facts and circumstances of the case, the learned CIT(Appeals) has erred in having confirmed disallowance of an amount of Rs. 1,42,500/- made by the Assessing officer by taking resort to the provisions of section 40(a)(ia) by holding that as no TDS was deducted out of the expenditure incurred on which TDS was deductable as per the provisions of the Act, the same was as such not an allowable expenditure."*

63. The issue raised in the above ground relates to disallowance of expenses on account of non deduction of taxes at source by applying the provisions of section 40(a)(ia) of the Act. The AO had made disallowance on account of the same of the following expenses:

| | | |
|---|---|---|
| 1) | Legal & Professional Fees | = Rs.75,000/- |
| 2) | AMC | = Rs.67,500/- |
| | Total | = Rs.1,42,500/- |

64. Before us at the outset itself the Ld.Counsel for the assessee pleaded that the facts of the case are that the assessee had deducted tax at source on both the expenses and deposited the same also in the Government Treasury. The Ld.Counsel for the assessee stated that the challans evidencing the deduction of tax at source on these payments and the deposit thereof in the Government Treasury was available with the assessee and drew our attention to the same filed in the Paper Book placed before us at page 5. Our attention was also drawn to the acknowledgement of statement of TDS, evidencing tax deducted on the impugned

payment and deposited in the Government Treasury. It was contended that these documents were very relevant for deciding the issue and the Ld.Counsel for the assessee pleaded that the same may be admitted for adjudication. An application for admission of the additional evidences was filed before us dated 15.10.2018.

65. The Ld. DR objected to the same.

66. We have considered the contentions of the Ld.Counsel for the assessee and we are in agreement with the same that the disallowance having been made on account of non deduction of tax at source on certain payments made, the evidences now filed by the assessee proving to the contrary are very relevant for the issue and allowance of the claim of the assessee. We, therefore, admit the additional evidences filed by the assessee in the form of challans evidencing deposit of tax deducted at source and the statement showing tax deducted at source on the impugned payments. We further restore the issue to the AO with the direction to verify the evidences now filed by the assessee and thereafter adjudicate the issue in accordance with law.

The ground of appeal No.6 raised by the assessee is, therefore, allowed for statistical purposes.

67. Ground of appeal No.7 raised by the assessee was not pressed before us and, therefore, the same is dismissed as not pressed.

In effect the appeal of the assessee is partly allowed for statistical purposes.

We now take up the appeal of the assessee in ITA No.1016/Chd/2017 relating to A.Y 2013-14

**ITA No.1016/Chd/2017(A.Y.2013-14):**

68. Ground of appeal No.1 and 9 raised by the assessee are general in nature and hence, need no adjudication.

69. Ground No.2 raised by the assessee reads as under:

> *"2. On the facts and circumstances of the case, the learned CIT(A) has erred , both on facts and in law in having confirmed the addition of Rs.3,78,337/- made to the income of the appellant being the difference in the receipts as per form No. 26AS and as accounted for in the books of accounts of the appellant."*

70. The above ground relates to addition made on account of difference in income as per Form No.26AS and as per income tax return.

71. It was common ground that the issue raised in the present ground was identical to that raised in ground No. 2 of assessee's appeal for A.Y 2011-12, in ITA No.1014/Chd/2017 .

In view of the same, with the issue admittedly being identical to that raised in ground No.2 in ITA No.1014/Chd/2017, our decision rendered therein will squarely apply to the said ground also, following which we restore the issue back to the AO to decide the same afresh in accordance with our directions given at para 7 of our order above.

The ground of appeal No.2 is allowed for statistical purposes.

72. Ground No.3 raised by the assessee reads as under:

> *"3. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the disallowance of an amount of Rs 6,95,680/- under section 36(1)(iii) being the amount of interest paid on bank loan taken for acquiring of assets not put to use in the year under reference."*

73. The above ground relates to disallowance of an amount of 6,95,680/- u/s 36(1)(iii) of the Act being the amount of interest paid on bank loan taken for acquiring of asset not put to use in the year under reference.

74. It was common ground that the issue raised in the present ground was identical to that raised in ground No. 3 of assessee's appeal for A.Y 2011-12, in ITA No.1014/Chd/2017 .

In view of the same, with the issue admittedly being identical to that raised in ground No.3 in ITA No.1014/Chd/2017, our decision rendered therein will squarely apply to the said ground also, following which we restore the issue back to the AO to decide the same afresh in accordance with our directions given at para 14 of our order above.

The ground of appeal No.3 is allowed for statistical purposes.

75. Ground of appeal No.4 raised by the assessee reads as under:

> *"4. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the disallowance of an amount of Rs*

*5,26,052/- under section 36(1)(iii) being the amount of interest paid on loans that should have been capitalized on capital work in progress in the hands of the appellant at the end of the year."*

76. The facts relating to the issue are that the AO noticed that the assessee had shown capital work in progress of Rs.40,46,558/- which had not been put to use. Accordingly, he disallowed the interest pertaining to the interest bearing funds used for the same on a proportionate basis, amounting to Rs.5,26,052/-. The Ld.CIT(A) upheld the same

77. The Ld.Counsel for the assessee contended that it had been pleaded before the lower authorities that no interest bearing funds had been used for the said purpose and the assessee had used its own funds which were available with it by way of free reserves. That no term loan or any unsecured loan was raised during the year, which fact was clear from the Balance Sheet of the assessee. The Ld.Counsel for the assessee stated that the Ld.CIT(A) without dealing with the specific assertion made by the assessee had upheld the order of the AO. Our attention was drawn to the pleadings made before the CIT(A) reproduced at para 5.1 of the order As under:

*"5.1 In appeal, following explanation was offered by the appellant.*

*"In this regard, it is submitted that the learned AO did not firstly appreciated the fact that opening of retail stores by the appellant was an ongoing process and the assets were not acquired by the appellant for any expansion of the existing business of the appellant Opening of stores to market its products for retail purposes was an integrated, part of the business of the appellant and cannot be termed as expansion of the existing business. Secondly, it was also submitted before the learned AO that as no term loan was either raised by the appellant nor any borrowings were made for acquiring the assets of these new stores, no interest out of the interest paid by the appellant was disallowable under the proviso to section 36(l)(iii) of the Act in as much as it is only the interest paid on capital borrowed for acquisition of assets not put to use in the year under reference which is required to be disallowed under the proviso and otherwise. As already submitted no capital was borrowed for the acquisition of these assets which were acquired by using its own funds which were available with the appellant by way of free reserves with it. Neither any term loan was raised from the bank nor any unsecured loan was raised by the appellant in the year under reference as will be evident from the copy of the balance sheet attached herewith. The accretion in the unsecured loans is only on account of interest payable to them on their loans. Copies of their accounts are also attached herewith for your ready reference and kind perusal."*

And at para 6.1 as under:

*"6.1 In appeal, the Ld. Counsel for the appellant made the following reply:-*

*"This ground of appeal relates to the disallowance of a sum of Rs. 5,26,052/- out of the interest paid by the assessee on loans raised by the appellant by taking resort to the proviso to section 36(l)(iii) being the amount of interest required to the capitalized on the capital work in progress of the assets not put to use or where no commercial activity has been started in the year under reference.*

*Our submissions are the same as has been made against ground No. 3 above for this ground of appeal.*

*They may kindly be taken into consideration while deciding this ground of appeal by your honour."*

78. Our attention was drawn to the findings of the Ld.CIT(A) at para 6.2 of his order as under:

*"6.2 I have examined the arguments extended by the Ld. Counsel for the appellant and also perused the assessment order. It is observed that the borrowed funds were used by the appellant for making investment in capital work in progress and the interest has not been capitalized. Therefore, the claim of interest as a revenue expense gets covered by the proviso to section 36(1)(iii) and accordingly upheld. The addition is confirmed and ground of appeal No.4 is dismissed."*

79. The Ld. DR, on the other hand, relied upon the order of the CIT(A).

80. We have heard the rival contentions. We find merit in the contention of the Ld.Counsel for the assessee. The assessee, we find, had made specific pleadings before the Ld.CIT(A) of not having used any interest bearing funds for investing in its capita work in progress and had also pointed out that no fresh loans either secured or unsecured had been taken by the assessee during the year. The Ld.CIT(A) has, we find, upheld the disallowance of interest without dealing with the specific submissions of the assessee and in a summary manner. The order passed on the issue by the CIT(A) is a non speaking order. Since the facts canvassed by

the assessee need verification, We restore the matter to the AO to verify the facts and deal with the specific submissions made by the assessee and thereafter decide the issue in accordance with law. The ground of appeal No.4 raised by the assessee is allowed for statistical purposes.

81. Ground No.5 raised by the assessee reads as under:

> *"5. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in having confirmed the allowance of depreciation on electrical installations and fittings at 10% instead of 15% as claimed by the appellant thereby confirming an addition of Rs. 18,88,632/- to the income of the appellant."*

82. The issue raised in the above ground relates to allowance of depreciation of electric installation of fittings @ 15% as claimed by the assessee as against 10% allowed by the revenue authorities.

83. It was common ground that the issue raised in the present ground was identical to that raised in ground No. 4 of assessee's appeal for A.Y 2012-13, in ITA No.1015/Chd/2017 .

In view of the same, with the issue admittedly being identical to that raised in ground No.4 in ITA No.1014/Chd/2017, our decision rendered therein will

squarely apply to the said ground also, following which we dismiss the said ground in accordance with our directions given at para 57 of our order above.

The ground of appeal No. 5 raised by the assessee is dismissed with the above directions.

84. Ground No.6 raised by the assessee reads as under:

> *"6. On the facts and circumstances of the case, the learned CIT(Appeals) has erred in having confirmed disallowance of an amount of Rs.2,24,097/- being the amount of expenditure incurred on foreign travel of the Directors by treating the same as non business expenditure."*

85. The above ground relates to claim of foreign travel expenses incurred on the directors of the assessee company amounting to Rs.2,24,097/- which was entirely disallowed by the AO treating the same as non business expenses in the absence of any evidence furnished by the assessee for its claim.

It was common ground that the issue raised in the present ground was identical to that raised in ground No. 5 of assessee's appeal for A.Y 2011-12, in ITA No.1014/Chd/2017 .

86. In view of the same, with the issue admittedly being identical to that raised in ground No.5 in ITA No.1014/Chd/2017, our decision rendered therein will squarely apply to the said ground also, following which we restrict the disallowance to 50% of the expenses ,in accordance with our directions given at para 28 of our order above.

The ground of appeal No.6 is partly allowed.

87. Ground of appeal Nos.7 and 8 raised by the assessee read as under:

> *"7. The CIT(Appeals) has erred in not having adjudicated the ground of appeal taken before him as regards the disallowance of an amount of Rs. 25,159/- made by the Assessing officer by taking resort to the provisions of section 40(a)(ia) by holding that as no IDS was deducted out of the expenditure incurred on which IDS was deductable as per the provisions of the Act, the same was as such not an allowable expenditure.*
>
> *8. The CIT(Appeals) has also erred in not having adjudicated the ground of appeal taken before him as regards the disallowance of an amount of Rs. 6,37,708/- .made by the Assessing officer being the amount of one fourth of the expenditure incurred by the appellant towards running and maintenance of cars including deprecation on the same by treating the same as personal expenses of the Directors."*

88. The above grounds were taken up together by the Ld.Counsel for the assessee stating that both the issues had

not been adjudicated by the Ld.CIT(A). Drawing our attention to the order passed by the Ld.CIT(A), the Ld.Counsel for the assessee pointed out that in ground Nos.7 and 8 raised before the Ld.CIT(A) the assessee had challenged the disallowance made by the AO by invoking the provisions of section 40(a)(ia) of the Act of interest amounting to Rs.25,159/- and of 1/4th of the expenditure towards running and maintenance of cars amounting to Rs.6,37,708/-. The Ld.Counsel for the assessee thereafter took us through the order of the Ld.CIT(A) and pointed out that the Ld.CIT(A) had dealt with only up to ground No.6 and had left the issues raised in ground Nos. 7 & 8 unadjudicated. The Ld. DR agreed to the same.

89. In view of the above, these issues need to be adjudicated afresh but since we have restored certain issues raised in this appeal to the AO, we restore these issues also to the AO to deal with the same afresh. We direct the AO to deal with the issue of disallowance of expenses incurred on vehicle running and maintenance on account of personal usage of the same by the Directors of the company on a reasonable basis considering the past history of the assessee, number of directors in the company, number of

vehicles owned by the assessee company, the nature of business carried out by the assessee and such other factors. The AO is directed to provide due opportunity of hearing to the assessee and thereafter decide the issue in accordance with law.

Ground Nos.7 and 8 raised by the assessee are allowed for statistical purposes.

In effect, the appeal of the assessee is partly allowed for statistical purposes.

90. In the result, all the appeals filed by the assessee are partly allowed for statistical purposes.

Order pronounced in the Open Court.

| | |
|---|---|
| Sd/- | Sd/- |
| **दिवा सिंह** | **अन्नपूर्णा गुप्ता** |
| **(DIVA SINGH)** | **(ANNAPURNA GUPTA)** |
| **न्यायकि सदस्य/Judicial Member** | **लेखा सदस्य/Accountant Member** |

**दिनांक /Dated: 29th August, 2019**

***रती***

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar