

IN THE INCOME TAX APPELATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 94/DEL/2019

A.Y.: 2015-16

Reed & Pick Impex (P) Ltd.,
Opposite ITI, GT Road,
Panipat
Haryana - 132103
(PAN: AADCR7101D)

VS. ITO, Ward-5,
Panipat

(Appellant)

(Respondent)

Assessee by : SH. C. AGGARWAL, A.R.
Department by : MS. Ekta Vishnoi, Sr. DR.

ORDER

This appeal filed by the Assessee is directed against the Order dated 20.11.2018 of the Ld. CIT(A), Karnal pertaining to assessment year 2015-16 on the following grounds:-

1. That on the facts and in the circumstances of the case the Ld. CIT(A) has eroded in confirming the addition of Rs. 287000/- P. out of an addition of Rs. 700828/- P. made by the Ld. AO u/s. 36(1)(iii) of the Income Tax Act, 1961. The same may kindly be deleted.

2. That on the facts and in the circumstances of the case the Ld. CIT(A) has eroded in confirming the addition of Rs. 124342/- P. out of an addition of Rs. 268684/- P. out of travelling / telephone and other expenses made by the AO. The same may kindly be deleted.
3. That the appellant craves the permission to add/ modify/ amend the grounds of appeal before the appeal is heard and disposed off.

2. The brief facts of the case are that the assessee filed its return declaring net income of Rs. 14,28,010/- on 06.10.2015 as e-return. Some defects were noticed by the CPC and intimated the assessee about the defects and the assessee removed the defects and return was finally filed by the assessee on 26.3.2017. The case of the assessee was selected for scrutiny and notice under section 143(2) of the Income Tax Act, 1961 (in short "Act") was issued on 26.9.2016 and served on the assessee on 29.9.2016. The assessee was asked to furnish copy of audit report and balance sheet with its annexure. Notice under section 142(1) of the Act was issued and compliance thereof has been made. The assessee furnished details as required and also produced books of accounts and vouchers. Details furnished were examined, books of accounts and vouchers were checked by the AO. The AR of the assessee attended the proceedings from time to time. During assessment proceedings, it was noticed by the AO that

the assessee has taken loan from Religare Finvest Ltd. and paid interest @ 9%. Further, balance sheet of the company reveals that the assessee has shown short term loans and advances to the various parties amounting to Rs.81,54,561/- with following noting in the annexure to balance sheet:-

"Advance recoverable in cash of kind for value to be received unsecured considered good for recovery (including Rs.36.44 Lacs (Last year Rs.45.98 Lacs) to persons/ concerns in which directors are interested."

2.1 The assessee was further asked to explain as to why interest on advances utilized other than business purposes may not be considered u/s. 36(1)(iii) of the Income-tax Act, 1961 and expenses on account of interest may be restricted up to the extent of funds utilized for business purposes and rest of the amount may not be disallowed. The assessee vide its reply dated 19.12.2017 has explained as under:-

"Detail of loan and advances to related parties has already been filed. It is further submitted that company has got interest free deposits from its directors of an amount much higher than the loans/advances and no action u/s 36(1)(iii) is called for."

2.2 Reply of the assessee was considered by the AO and it was found that the unsecured loans accepted from the Directors of the Company are mainly credit of salary, rent etc which the assessee has already claimed as expense and no interest on these funds are allowable. For claim of deduction of interest on borrowed capital under section 36(1)(iii) of the Income-tax Act, 1961, the assessee has satisfied that money should be borrowed, the money so borrowed must have been used for the purpose of business and interest is paid or payable. The assessee does not satisfy all the conditions for claim of deduction as he has not utilized an amount of Rs. 81,54,561/- as this amount was given to the related persons of the Directors of the company and no nexus of business is established by the assessee during the course of assessment proceedings with the said loans and advances. The assessee has taken loan from the Religare Finvest Ltd and given to the persons related to the Directors of the company without charging any interest. AO observed that that the funds to the tune of Rs.81,54,561/- are not utilized for the business purposes and interest on this amount, paid by the assessee to Religare Finvest Ltd is not an allowable expense in view of section 36(1)(iii) of the Income-tax Act, 1961. It was also admitted that an amount of Rs.45.98 Lakh pertains to the preceding year and such interest on this amount comes to Rs.4,13,828/-. Regarding rest of the persons an amount of Rs.36.44 lakh was given as loan or advance on monthly basis except the amount advanced to Smt. Neelam Garg and Sh. Ratvik Aggarwal. After taking into consideration the opening balance and advanced during the year under consideration interest amount comes to Rs.2,87,000/-. Thus the total of interest comes to

Rs.7,00,828/- and the same was required to be disallowed. AO placed the reliance of the Hon'ble Punjab & Haryana High Court decision in the case of CIT Vs. M/s Abhishek Industries Ltd. and added the addition of Rs.7,00,828/- to the income returned by the assessee.

2.3 Further, the assessee has shown and claimed expenses amounting to RS. 4,46,886/- on account telephone expenses, Rs.13,08,633/- on account of travelling expenses, RS.2,27,604/- on account of s: reign travelling expenses, RS. 4,89,160/- on account of vehicle running and maintenance expenses and Rs.4,14,564/- as misc expenses. Thus the assessee has debited an amount of RS.28,86,847/- to the profit & loss account under these heads of expenses. As per AO these expenses cannot be accepted as completely for the purpose of business and profession of the company and have some expenses of personal nature. During the course of verification of books of accounts and vouchers, it was observed that these expenses include some of the expenses of personal nature of the directors of the company. After discussion 1/10 of the expenses were disallowed on account of expenses of personal nature and are disallowed, which comes to RS.2,88,684/- out of the total expenses of RS.28,86,847/-. The assessee has itself disallowed Rs.20,000/- in the computation of income and credit of this was being allowed and rest of the amount of Rs.2,68,684/-(Rs.2,88,684/- minus Rs.20,000/-) was added to the income of the assessee and addition of Rs.2,68,684/- was made to the income of the assessee by completing the assessment at Rs. 23,97,520/- u/s. 143(3) of the Act vide order dated 26.12.2017. Against the said assessment order,

assessee appealed before the Ld. CIT(A), who vide his impugned order dated 20.11.2018 has partly allowed the appeal of the assessee. Aggrieved with the order of the Ld. CIT(A), assessee is in appeal before the Tribunal.

3. At the time of hearing Ld. Counsel for the assessee reiterated the contentions raised in the grounds of appeal and requested to delete the addition in dispute by accepting the appeal of the assessee.

4. On the contrary, Ld. DR relied upon the orders of the authorities below and stated that Ld. CIT(A) has passed the well reasoned order, which does not need any interference on our part.

5. I have heard both the parties and perused the records especially the order of the Ld. CIT(A). I note that assessee has stated that the loan raised was primarily utilized to repay the loan earlier taken from Bank of Baroda. It was also stated that the company has raised interest free unsecured loans amounting to Rs. 79,37,414/-. It is noted that the AO has calculated the interest on both the opening balance of RS. 45,97,767/- and the closing balance of Rs. 36,44,161/- The correct calculations of disallowance should be on the closing balance only. Therefore, the addition was rightly confirmed by the Ld. CIT(A) to the extent of Rs. 2,87,000/- only and accordingly, the assessee gets a relief of Rs. 4,13,828/-, which does not need any interference on my part, hence, I uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground raised by the Assessee.

5.1 As regards addition on account of travelling, foreign travelling, telephone, vehicle running and maintenance and misc. expenses is concerned, I note that during the assessment proceedings some of

the expenses were of personal nature in respect of the Directors of the Company and the addition was correctly been made by the AO. But Ld. CIT(A) has observed that the rate of disallowance @10% is a little high and therefore, restricted the same to 5% and directed the AO to re-compute the same, which does not need any interference on my part, hence, I uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground raised by the assessee.

6. In the result, the Appeal of the assessee is dismissed.

Order pronounced on 18-10-2019.

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date:18/10/2019

SRB

Copy forwarded to: -

1. Appellant 2. Respondent 3. CIT 4.CIT (A) 5. DR, ITAT

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By Order,

Assistant Registrar, ITAT, Delhi Benches