

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

ITA No. 7709/DEL/2018

A.Y.: 2014-15

Super Auto Centre,
Indian Oil Petroleum Pump,
Srinivaspuri, Ring Road,
New Delhi – 65
(PAN: AAPFS7207N)

VS. ITO, Ward-28(1),
New Delhi

(Appellant)

(Respondent)

Assessee by : SH. Rohit Tiwari, Adv.
Department by : MS. Ekta Vishnoi, Sr. DR.

ORDER

This appeal filed by the Assessee is directed against the Order dated 25.9.2018 of the Ld. CIT(A)-10, New Delhi pertaining to assessment year 2014-15. Originally the assessee has filed the 09 grounds of appeal running into 8 pages. But on asking by the Bench, Assessee filed the concise grounds of appeal which read as under:-

1. That on the facts and in the circumstances of the case and in law, the order passed by the Ld. CIT(A) is wrong and bad in law.
2. That the Ld. CIT(A) erred on facts and in law in confirming the action of the AO of disallowing the amount of interest Rs. 12,28,800/- (12% of Rs.

1,02,40,000) out of interest debited to profit and loss account as per the provisions of section 36(1)(iii) of the Income Tax Act, 1961.

3. That the AO & CIT(A) erred in not appreciating that the amount of Rs. 1,02,40,000/- was given out of the interest free funds available with the company.

4. That the AO & CIT(A) erred in not appreciating that the decision of Hon'ble Punjab and Haryana High Court in the case of Abhishek Industries Ltd. Has been overruled by Hon'ble Supreme Court of India in the case of Munjal Sales Corp. vs. CIT (2008) 298 ITR /168 Taxmann. 43(SC) and in the case of Hero Cycles (P) Ltd. Vs. CIT (Central) Ludhiana (2015) 63 taxmann.com 308 (SC)/[2015] 379 ITR 347 (SC) (2015) 281 CTR 481 (SC.).

2. The facts relating to the case are that the assessee filed its return of income at Rs. 8,42,030/- on 19.9.2014. The case of the assessee was selected for scrutiny through CASS. Notice u/s. 143(2) of the Income Tax Act, 1961 (in short "Act") was issued on 28.8.2015 by the ITO, Ward 28(2), New Delhi and the same was duly served upon the assessee. Subsequently, on receipt of case on transfer the notice u/s. 143(2) of the Act was also issued alongwith notice u/s.

142(1) of the Act. The main issue involved in the scrutiny proceedings in this case is claim of interest expenses debited to the profit and loss account and its allowability under the Income Tax Act. AO asked the assessee about this query and in response to the same the assessee replied that Rs. 1,02,40,000/- was paid as advance for purchase of commercial properties to be used for future projects of installing petrol pump at various places if approved by Indian Oil Corporation, no interest were charged on such payment as they were exclusively for business purpose. The explanation of the assessee was rejected by the AO and he was of the view that since the assessee failed to prove any business purpose of advances against property despite repeated specific queries on this issue, interest components towards advance of Rs. 1,02,40,000/- was disallowed as per the provisions of section 36(1)(iii) of the Act. For purpose of disallowance average rate of interest @ 12% per annum was considered and Rs.12,28,800/- (@12% of Rs. 10,02,4000/-) was disallowed out of interest debited to the profit and loss account as per the provision of section 36(1)(iii) and added back to the income of the assessee by completing the assessment at Rs. 20,70,830/- u/s. 143(3) of the Act vide order dated 30.11.2016. Against the assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 25.9.2018 dismissed the appeal of the assessee. Aggrieved with the impugned order dated 25.9.2018 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. In support of his contention he has filed a Paper Book containing pages 1-167 in which

he has attached the copy of Memorandum of appeal to the Appellate Tribunal (Form No. 36); statement of facts before the Tribunal; grounds of appeal before the Tribunal; appellate order / impugned order passed by CIT(A); assessment order u/s. 143(3) passed by the respondent/ITO; statement of facts before CIT(A); grounds of appeal before CIT(A); details of facts / grounds related to the appeal filed before the CIT(A); application for amendment filed before the CIT(A) alongwith amended statement of facts and grounds of appeal; submission dated 22.8.2016 filed by the AR of the assessee/appellant before the respondent/AO; details of unsecured loans, sundry creditors and security received for the year 2013-14 and 2014-15; complete set of balance sheet pertaining to financial year 2012-13 and 2013-14 alongwith audit report; acknowledgement of ITR for assessment year 2014-15; orders / authorities relied upon and copy of section 36 of the Income Tax Act, 1961. He requested that the addition in dispute may be deleted by accepting the appeal of the assessee.

4. On the contrary, Ld. DR relied upon the orders of the authorities below. In addition to the arguments advanced by the Ld. DR, Ld. DR has also filed the written submissions and cited some judgments to support the impugned order which are reproduced as under:-

Sub: Written Submission in the above case- reg.

In the above case, it is humbly submitted that the following decisions may kindly be considered with regard to disallowance u/s 36(1)(iii) on account of

interest free loans given to Directors/ Partners or their close relatives:

1. *Punjab Stainless Steel Inds. Vs CIT [2011] 196 Taxman 404 (Delhi)/[2010] 324 ITR 396 (Delhi)*

In this case there was absolutely no finding recorded by Tribunal that interest free advances were made by assessee to sister concern for its business purposes. It was also noticed that advances were extended out of borrowed funds and not out of any credit balance available with assessee-firm. Hon'ble Delhi High Court held that impugned order passed by authorities below was to be upheld.

2. *Thukral Regal Shoes Vs CIT [2016] 72 taxmann.com 192 (Punjab & Haryana)/[2016] 241 Taxman 361 (Punjab & Haryana)/[2017] 391 ITR 119/(Punjab & Haryana)/[2016] 290 CTR 596 (Punjab & Haryana) (Copy Enclosed)*

where Hon'ble Punjab & Haryana High Court held that where assessee-firm failed to establish that properties purchased by its partners were put to use by firm, deduction on interest expenditure on borrowed fund could not be allowed in view of proviso to section 36(1)(iii).

3. *CIT v. Cornerstone Exports (P.) Ltd. (238 Taxman 465) (Gujarat) (Copy enclosed) Where*

Hon'ble Gujarat High Court held that where Assessee borrowed funds at higher rate, action of Assessee to make advances to group companies at a lower rate of interest could not be any business expenditure. Disallowance of differential interest was justified.

4. *Abhishek Industries Ltd. Vs CIT [2006] 156 Taxman 257 (Punjab & Haryana)/[2006] 286 ITR 1 (Punjab & Haryana)/[2006] 205 CTR 304 (Punjab & Haryana) (Copy Enclosed) where Hon'ble Punjab & Haryana High Court held that once it is borne out from record that assessee had borrowed certain funds on which liability to pay tax is being incurred and on other hand, certain amounts had been advanced to sister concerns or others without carrying any interest and without any business purposes, interest to extent that advance had been made without carrying any interest is to be disallowed under section 36(1)(iii).*

5. *CIT Vs. R Mohan (2011-TIOL-687-HC-MAD-IT) (Copy enclosed) Where Hon'ble Madras High Court held that the assessee is not entitled to claim interest expenditure on the borrowed funds which were diverted to non-business objects."*

5. I have heard both the parties and perused the records especially the orders of the authorities below alongwith the contention of the rival sides as well as the Paper Book filed containing

pages 1-167, as mentioned above and the Written submissions filed by the Ld. DR. I am of the view that the main issue involved in the present appeal is whether the claim of interest expenses debited to the profit and loss account is allowable to the assessee under the Income Tax Act, 1961 as a business expenses u/s. 36(1)(iii) of the Act or not. After going through the written submissions filed by both the parties as well as documentary evidences, I am of the view that before the AO assessee has not substantiated the claim while filing any relevant documentary evidences and the AO disallowed the claim of the assessee u/s. 36(1)(iii) of the Act and disallowed the interest amounting to Rs. 12,28,800/- @12% of Rs. 1,02,40,000/- and added the same to the income of the assessee. Ld. CIT(A), after considering the submissions filed by the assessee alongwith documentary evidences has also dismissed the appeal of the assessee and upheld the assessment order by holding that the assessee failed to prove any business purpose of advance given against property and therefore, the amount of Rs. 12,28,8000/- @ 12% of Rs. 1,02,40,000/- was disallowed out of interest expenses debited to the profit and loss account. Ld. CIT(A) has also held that assessee has not furnished the details of unsecured loan which was interest free. Moreover, the AO has considered interest free unsecured loan as a source for interest free advance given amounting to Rs. 20,56,950/- and finally rejected the contention raised by the assessee and the Ld. CIT(A) has rightly upheld the order of the Assessing Officer in which the AO disallowed the amount of Rs. 12,28,800/-.

5.1 After going through the contention in the grounds raised as well as documentary evidences filed by the assessee in the shape of paper

book along with the submissions of the Ld. DR, I am of the view that no interference is called for in the well reasoned order of the Ld. CIT(A), because the assessee has not given any detail of unsecured loan which was necessary and other documentary evidence for substantiating the claim before the revenue authorities, especially before the AO and Ld. CIT(A) and before the tribunal. Therefore, keeping in of the facts and circumstances of the case as explained above, I uphold the order 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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches