

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,  
NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER, AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No.3317/DEL/2017  
[Assessment Year: 2013-14]**

M/s Design Forum International, K-47, Kailash Colony, New Delhi-110048	ACIT, Circle-63(1), New Delhi
<b>PAN-AAEFD8417C</b>	
Appellant	Respondent

Appellant by	Shri Ved Jain, Adv.
Respondent by	Shri Surendra Meena Sr. DR

<b>Date of Hearing</b>	<b>08/08/2019</b>
<b>Date of Pronouncement</b>	<b>30/10/2019</b>

**ORDER**

**PER SUCHITRA KAMBLE, JUDICIAL MEMBER**

This appeal is filed by the assessee against the order dated 28/02/2017 passed by the CIT(A)-20, New Delhi, for Assessment Year-2013-14.

2. The grounds of appeal are as under:-

*1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.*

*2(i) 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 Rs. 19,43,548/- on account of interest on borrowings paid by the assessee.*

*(ii) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in laws in ignoring the fact that the alleged loans and advances extended to the various parties on account of business expediency, hence no disallowance of interest is called for.*

(iii) That the above disallowance was made rejecting the contention of the assessee that the borrowed funds were used for business activities only and hence the interest paid is a deductible expenditure.

3(i) 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 Rs. 11,542/- being 10% of the expenses incurred on account of vehicle running & maintenance.

(ii) That the disallowance has been confirmed @ 10% arbitrarily without there being any basis for the same.

(iii) The disallowance has been confirmed despite the fact that all the expenses have been incurred wholly and exclusively for the purposes of business only.”

3. The assessee firm is engaged in the business of providing architectural services for housing and commercial projects. During the year under consideration, the assessee derived income from business or profession. The assessee filed its return of income on 28/09/2013, declaring total income at Rs.2,37,36,341/-. Subsequently, the case was selected for scrutiny under CASS. Notice u/s 143(2) was issued and served upon the assessee within the stipulated period. Again notice u/s 142(1) along with detailed questionnaire was issued to the assessee. In response to the notices, Chartered Accountant/Authorised Representative of the assessee attended the assessment proceedings from time to time and filed necessary details, information/documents etc as required. Books of accounts and vouchers were produced during the course of assessment proceedings which were examined on test check basis. The income of the assessee is recomputed as under:-

S. No.	Particulars	(Amount in ₹)
	<b>Income as per computation tiled by the assessee</b>	<b>72,37,36,341/-</b>
i.	Disallowance of expenses which have not been paid in the relevant financial year	713,84,498/-
II.	Non grant of TDS Claims 15,88,890/-)	NIL
III.	Disallowance of Interest	729,28,540/-
IV.	Disallowance on account of unverifiable bills/vouchers Expenses	71,57,088/-
	<b>Total disallowance</b>	<b>744,70,126/-</b>
	<b>Total Income</b>	<b>72,82,06,467/-</b>
	Rounded off	<b>72,82,06,467/-</b>

Thus, the income of the assessee is assessed at Rs.2,82,06,467/- by the Assessing Officer.

5. Being aggrieved by the order of the Assessing Officer, the assessee is in appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

6. As regards Ground No. 2 (ii), the Ld. AR submitted that the same is not pressed, hence Ground No. 2(ii) is dismissed.

7. As regards to Ground No. 2 (i) and (iii), the Ld. AR submitted that no disallowance can be made in respect of the amount paid to such parties in the earlier years which is standing under the head 'loans and advances' as opening balance. In this regard, the Ld. AR pointed out that the interest on account of payment made in earlier year to such parties aggregates to Rs. 14,16,000/- (12,00,000 pertains to amount paid to M/s Chintel India Ltd. in earlier years). The Ld. AR further pointed out that no addition was made on account of interest in earlier years that are A.Y. 2011-12 and A.Y. 2012-13. In such circumstances, considering the interest on account of opening balance is bad in law and as well as on facts. The Ld. AR further submitted that payment was made from the current account held with ABN Amro Bank which became the Royal Bank of Scotland which are reflected in the ledger accounts. The party wise interest paid listing placed in the paper book also reveals that no interest was paid to such bank. The Ld. AR further submitted that the said bank account is reflecting under the head current assets in the balance sheet. The Ld. AR submitted that it is not a case of the assessee that it had not applied for the flat itself. It is the case of the assessee that the assessee had to apply for the flat as a measure of commercial expediency in order to recover the fees amount. It was mutually agreed between the assessee and the respective parties that the payment for fees will be made subject to the condition that the assessee applies for allotment of flat. Thus, assessee had to apply for allotment of flat as a measure of commercial expediency. The ledger account of such parties where in the receipt of money is reflecting was also placed on record. Further, a summary sheet reflecting the date of receipt of amount and

the date of payment for flat is also submitted by the assessee. The Ld. AR submitted that perusal of the same reveals that the assessee had applied the fees amount towards the purchase of flat as per the terms agreed upon. The Ld. AR further submits that had the assessee not applied towards the flat, it would not have been able to recover the fees amount. The Ld. AR pointed out that the assessee had duly offered such receipt amount to its income on cash basis in accordance with its method of accounting as evident from the ledger accounts of such parties. The Ld. AR submitted that the CIT(A)'s allegation that under the cash system of accounting, there is no debtor that exists in the books of accounts and no amount ought to be standing under the head current assets is incorrect appreciation of facts and has no relevance to the case. The Ld. AR submitted that the amount standing is not as debtor, but as advance towards flat. Further, with regard to allegation of the CIT(A) that the business of the assessee is to provide architectural services and amount advances to purchase flat cannot be considered to be business of the assessee, the Ld. AR submitted that it is not the case of the assessee that it is the business of the assessee to buy and sell flats. It is the case of the assessee that the money was advanced to the parties as a measure of commercial expediency i.e. to safeguard its interest and recover the fees due from the said parties. The Ld. AR submitted that it is a settled law that no disallowance can be made under Section 36(1)(iii) in respect of the money advanced as a measure of commercial expediency. "Commercial Expediency" is the prerogative of the businessman and that the Revenue cannot justifiably claim to put itself in the armchair of the businessman and dictate as to what is "commercial expediency". The Ld. AR relied upon the following decisions:

1. S. A. Builders Ltd. vs. CIT (2007) 288 ITR 1 (SC)
2. Hero Cycles (P.) Ltd. vs. CIT (2015) 379 ITR 347 (SC)
3. PCIT vs. Basti Sugar Mills Co. Ltd. (Del. HC) (ITA No. 205 order dated 28.09.2018)
4. DCIT vs. M/s Jetair Pvt. Ltd. (Tri. Del.) (ITA Nos. 2712, 2713 and 6884/Del/2015 order dated 19.09.2018)

5. Chemical Sales and Services 3N vs. ITO (Tri. Del.) (ITA No. 4146/Del/2015 order dated 26.09.2018)

6. PCIT vs. DLF Holding Ltd. (Del. HC) (ITA No. 1012/2018 order dated 28.09.2018)

Thus, the Ld. AR submitted that the disallowance made, deserves to be deleted. The Ld. AR further submitted that the balance sheet of the assessee reveals that it has its own funds to the tune of Rs. 56,73,773. Thus, no disallowance can be made to the extent of such amount advanced (Interest of Rs. 6,80,853) in view of the recent judgement of the Hon'ble Supreme Court in case of CIT vs. Reliance Industries Ltd. (2019) 410 ITR 466 (SC) wherein it has been held that where the interest free funds are available with the assessee, it could be presumed that the investments were first made from the interest free funds available with the assessee. The Ld. AR relied upon the following decisions:

1. Punjab Stainless Steel Inds. Vs. ACIT (2019) (6) TMI 427 – Tri. Del.
2. CIT vs. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom. HC)
3. CIT vs. Amod Stamping (P.) Ltd. (2014) 223 Taxman 256 (Guj. HC)
4. PCIT vs. Consumer Marketing (India)(P.) Ltd. (ITA No. 646 of 2015 Guj. HC)
5. M/s R. N. Gupta & Co. Ltd. vs. Addl.CIT (ITA No. 848/Chd/2015 dated 12.04.2016 Tri. Chandigarh)

In view of the above, the Ld. AR prayed that the addition made be deleted as the same is injudicious both on law and on facts.

8. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

9. We have heard both the parties and perused all the relevant material available on record. From the perusal of records, it can be seen that payment was made from the current account held with the bank, are duly reflected in the ledger accounts. The details of party wise interest paid also reveals that no interest was paid to such bank. The said bank account is reflecting under the head current assets in the

balance sheet. It is the case of the assessee that the assessee had to apply for the flat as a measure of commercial expediency in order to recover the fees amount. It was mutually agreed between the assessee and the respective parties that the payment for fees will be made subject to the condition that the assessee applies for allotment of flat. Thus, assessee had to apply for allotment of flat as a measure of commercial expediency. The ledger account of such parties where in the receipt of money is reflecting was also placed on record. Further, a summary sheet reflecting the date of receipt of amount and the date of payment for flat is also submitted by the assessee. From the records it can be seen that the assessee had applied the fees amount towards the purchase of flat as per the terms agreed upon. It can further emerges from the records that the assessee had duly offered such receipt amount to its income on cash basis in accordance with its method of accounting which is also evident from the ledger accounts of such parties. Thus, the CIT(A) was not right in sustaining the addition in respect of interest incurred on account of amount standing as advance in respect of interest incurred on account of amount standing as advance in respect of such parties. Therefore, the order of the CIT(A) is set aside. Ground No. 2(i) and 2(iii) are allowed.

10. As regards to Ground No. 3 relating to disallowance of Rs. 11,542/- on account of Vehicle Repair and maintenance, the Ld. AR submitted that it is settled law that if the Assessing Officer has not pointed out any specific defect in the books of the assessee, and has not even pointed out the specific instances where the expenses have been incurred by the assessee for personal purposes, ad-hoc disallowance made by the Assessing Officer without any basis could not be upheld. The Ld. AR relied upon the following decisions:

1. DCIT vs. Grintex India Ltd. (ITA No. 4622/Del/2016 Del. Tri.)
2. ACIT vs. Amtek Auto Ltd. (2006) 112 TTJ 455
3. M/s Nine Dot Nine Mediawork Pvt. Ltd. vs. ITO (ITA No. 1262 & 863/Del/2016 dated 30.07.2018 Del. Tri.)

4. Dhir & Dhir Associates vs. ACIT (ITA No. 2169/Del/2014 dated 16.06.2017 Del. Tri.)
5. Sh. Gagan Goyal vs. JCIT (ITA No. 1514/Del/2015 dated 02.08.2016 Del. Tri.)
6. ACIT vs. Precision Pipes & Profiles Co. Ltd. (ITA No. 4257 & 4258/Del/2012 dated 12.10.2012 Del. Tri.)
7. DCIT vs. FCB Ulka Advertising Pvt. Ltd. (ITA No. 5404/Mum/2007 dated 21.05.2014 Mum. Tri.)

Thus, the Ld. AR prayed that the addition deserves to be deleted.

11. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

12. We have heard both the parties and perused all the relevant material available on record. From the perusal of records it can be seen that the assessee duly furnished the bills/vouchers in respect of the expenses related to vehicle repairs and maintenance. The Assessing Officer as well as the CIT(A) could not point out any discrepancy in the books of account of the assessee. Therefore, the CIT(A) is not right in confirming this addition. Ground No. 3 is allowed.

13. In result, appeal of the assessee is partly allowed.

**Order pronounced in the open court on 30/10/2019.**

Sd/-  
**[PRASHANT MAHARISHI]**  
**ACCOUNTANT MEMBER**

Sd/-  
**[SUCHITRA KAMBLE]**  
**JUDICIAL MEMBER**

**Delhi;** Dated: 30/10/2019.

*Shekhar, Sr. P.S*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)

## 5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	16/10/2019
Date on which the typed draft is placed before the dictating Member	16/10/2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	