

आयकर अपील अा अधकरण, अहमदाबाद ँयायपीठ 'B' अहमदाबाद

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD**

**BEFORE HON'BLE MR. JUSTICE P.P. BHATT, PRESIDENT
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 255/Ahd/2018

(नधाण वष Assessment Year: 2014-15)

M/s. Akash Fashion Prints Pvt. Ltd. 238 Saijpur Gopalpur, Shahwadi Octrionaka, Narol Ahmedabad-382405	बनाम/ Vs.	The ITO, Ward-1(1)(4), Ahmedabad-380015
थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCA8319C		
(अपीलाथ/ Appellant)	..	(अयथ / Respondent)

अपीलाथ ओर से/ Appellant by :	Shri Sanjay R. Shah, A.R
अयथ ओर से / Respondent by:	Shri Mudit Nagpal, Sr.DR

सुनवाईकसाराख/Date of Hearing	07/10/2019
घोषणाकसाराख /Date of Pronouncement	24/10/2019

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee's appeal for A.Y. 2014-15, arises from order of the CIT(A), Ahmedabad dated 13-11-2017, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

2. The assessee has raised following grounds of appeal:-

“1.0 The learned CIT(A) erred in confirming an addition of Rs.6,06,106/- made by the learned A.O. u/s 2 (24) (x) r.w.s. 36 (1) (va) of the Act. It is submitted that in the facts and circumstances of the case, such addition is unwarranted and same be deleted.

2.0(i) The learned CIT (A) erred in confirming the disallowance of Rs.96,206/- being excess depreciation claimed on electric fittings which was disallowed by the learned A.O.

(ii) The learned CIT(A) erred in applying the decision of CIT(A) in earlier Assessment Year to the facts of the current year when the facts were different in the current year. It is submitted that it be so held now and the disallowance made be deleted.

3.0(1) The learned CIT(A) erred in confirming the disallowance of Rs.28,16,941/- u/s 36 (1) (iii) being proportionate interest expenses notionally calculated and disallowed by the learned A.O. considering them as attributable to capital work in progress. It is submitted that there is no such interest expense incurred by the appellant for the capital work in progress as envisaged u/s 36 iii) for the year under consideration and the same be directed to be deleted.

(ii) The learned CIT(A) grossly erred in law and on facts in the following order of the CIT(A) for earlier Assessment Year when the facts were different as compared to the year under consideration.

(iii) Without prejudice to the foregoings if at all the disallowance is to be made, the same should not exceed Rs. 16,50,432/- as mentioned by the appellant in his written submission before the learned CIT(A).”

3. The fact in brief is that return of income declaring income of nil was filed on 28th Nov, 2014. The case was selected under scrutiny by issuing of notice u/s. 143(2) of the act on 3rd Sep, 2015. The assessment u/s. 143(3) of the act was completed on 2nd December, 2016. The issues arising from the grounds of appeal are dealt within the succeeding paras.

Ground No. 1

4. During the course of assessment, the assessing officer noticed that contributions from employees towards provident fund has been deposited after the due date for payment as stipulated in the provident fund and ESI act. Consequently, the assessing officer has disallowed an amount of Rs. 6,06,106/- under the provisions of section 2(24)(10) r.w.s 36(1)(va) of the act.

5. Aggrieved assessee has filed appeal before the Id. CIT(A). The CIT(A) has confirmed the disallowance after placing reliance on the

decision of Honøble High Court of Gujarat in the case of Gujarat State Road Transport Corporation.

6. Ld. representatives fairly agreed that the issue is covered in favour of the revenue by the Honøble Jurisdictional High Court Judgment in the case of CIT vs. Gujarat Road Transport Corporation Ltd. (2014) 366 ITR 170 (Guj). The ld. counsel has also brought to our notice that identical issue on similar facts has been adjudicated in the case of the assessee itself by the Co-ordinate Bench of the ITAT vide ITA No. 516 and 517/Ahd/2017 on 1st July, 2019 in favor of the revenue. We therefore approve the conclusion arrived at by the CIT(A) and decline to interfere in the matter.

Ground No. 2

7. During the course of assessment, the assessing officer observed that assessee has claimed depreciation of Rs. 1,25,216/- @ 15% on electric fittings which is not plant and machinery. The assessing officer is of the view that assessee is entitled to depreciation @ 10% on furniture and fitting including electric fittings as per Appendix 1 to Income Tax Rules, 1962. Accordingly, the assessing officer has disallowed the excess claim of depreciation on electric installation of Rs. 96,206/- and added to the total income of the assessee.

8. The assessee preferred the appeal before the ld. CIT(A). The ld. CIT(A) has confirmed the disallowance reiterating the facts reported by the assessing officer.

9. During the course of appellate proceedings before us, the Id. counsel has brought to our notice that identical issue on similar facts has been decided in favour of the assessee by the Co-ordinate Bench of the ITAT vide ITA No. 516/Ahd/2017 & 517/Ahd/2017 dated 1st July, 2019. The Id. departmental representative fairly agreed that the issue is covered in favour of the revenue. With the assistance of Id. representatives, we have gone through the above cited decision of the ITAT Ahmedabad and noticed that identical issue on similar facts has been decided in favour of the assessee. The relevant part of the decision of Co-ordinate Bench is reproduced as under:-

“6. We find that undoubtedly in a situation in which an electric fitting is indeed an integral part of the plant and machinery, depreciation has to be allowed at the rate applicable for the plant and machinery. However, that aspect of the matter has not been examined by any of the authorities below. We, therefore, deem it fit and proper to remit the matter to the file of the Assessing Officer for fresh examination in the light of our observations above. Ordered, accordingly.”

We find that this issue is now covered in favour of the assessee by a Co-ordinate Bench decision, we therefore, remit the matter to the file of the assessing officer for fresh examination in the light of the decision of the Co-ordinate Bench as cited above.

Ground No. 3

10. During the course of assessment on perusal of balance sheet of the assessee company, the assessing officer observed that assessee has shown capital work in progress amounting to Rs. 5,71,21,409/-. The assessee was requested to explain whether any interest has been capitalized in respect of capital work in progress as per the proviso to section 36(1)(iii) of the act. The assessee explained that no interest should be disallowed on the capital work in progress as whole of this expenditure has been incurred from

company's own funds and there was no borrowing for these items. The assessing officer has not agreed with the explanation of the assessee and observed that assessee has paid interest of Rs. 1,49,77,379/- on borrowed fund. Accordingly, the assessing officer has worked out proportionate disallowance of interest of Rs. 28,16,941/- after taking into account total assets of Rs. 51,83,58,157/- including capital work in progress of Rs. 16,50,430/-.

11. The assessee has preferred appeal before the Id. CIT(A). The Id. CIT(A) has confirmed the disallowance made by the assessing officer.

12. During the course of appellate proceedings before us, the Id. counsel has contended that similar issue on identical facts in the case of the assessee itself has been adjudicated in favour of the assessee by the Co-ordinate Bench of ITAT Ahmedabad vide ITA No. 516/Ahd/2017 & 517/Ahd/2017 dated 1st July, 2019. The Id. departmental representative is fairly agreed that the issue is decided in favour of the assessee. Relevant part of decision of Co-ordinate Bench on this issue is reproduced as under:-

"15. We find that this issue is now covered, in favour of the assessee, by a coordinate bench's decision in the case of PG Foils Ltd Vs. ACIT (ITA No. 912/Ahd/2015; order dated 11.12.2018) inasmuch as when the assessee has sufficient interest free funds to meet the investment, no part of interest can be said to be relatable to investment in question. In the said decision, co-ordinate bench has observed as follows:-

"22. We have heard the rival contentions and perused the material available on record. At the outset, we note that the own interest-free fund available with the assessee exceeds the amount of investment made in the capital work-in-progress. Therefore, we can presume that the assessee in such capital work-in-progress invested the own fund. In holding so, we find support and guidance from the judgment of Hon'ble Bombay High Court in the case of Reliance Utilities and Power Ltd. reported in 313 ITR 340 wherein it was held as under-

"The principle therefore would be that if there are funds available both interest-free and overdraft and/or loans taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the company, if the interest-free funds were sufficient to meet the investments. In this case this

presumption is established considering the finding of fact both by the CIT(A) and Tribunal".

22.1. Similarly, we also rely on the judgment of the Hon'ble Bombay High Court in the case of CIT vs. HDFC Bank Ltd reported in 366 ITR 505 (Bom). The relevant extract of the order is reproduced below:-

"Where assessee's capital, profit reserves, surplus and current account deposits were higher than the investment in tax-free securities, it would have to be presumed that investment made by the Assessee would be out of the interest-free funds available with Assessee and no disallowance was warranted u/s 14A."

22.2. Similarly, we also find support from the judgment of Hon'ble Gujarat High Court in the case of UTI Bank Ltd. reported in 32 Taxmann.com 370 where the headnote reads as under:

"If there are sufficient interest free funds to meet tax free investments, they are presumed to be made from interest free funds and not loaned funds and no disallowance can be made under section 14A".

22.3 In view of the above proposition, we hold that no disallowance of interest expense claimed by the assessee can be made on account of fund invested in the capital work in progress as discussed above. Hence, we reverse the order of the authorities below. The AO is directed to delete the addition made by him. Thus the ground of assessee's appeal is allowed."

16. In view of the above discussions, as also bearing in mind entirety of the case, we uphold the plea of assessee in principle, as stated above, and remit the matter to the file of the Assessing Officer for necessary factual verification."

In view of the above discussion and decision of Co-ordinate Bench as cited above, we uphold the plea of the assessee and remit the matter to the file of assessing officer for necessary factual verification. In the result, the ground of appeal of the assessee is allowed for statistical purpose.

13. In the result, the appeal of the assessee is partly allowed for statistical purposes as indicated above.

Order pronounced in the open court on 24-10-2019

Sd/-
JUSTICE P.P. BHATT
(PRESIDENT)
Ahmedabad : Dated 24/10/2019

Sd/-
AMARJIT SINGH
(ACCOUNTANT MEMBER)

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलार्थ आधिकरण,
अहमदाबाद