

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**CHANDIGARH BENCH, 'SMC', CHANDIGARH**

**श्री संजय गर्ग, न्यायिक सदस्य**  
**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER**

**आयकर अपील सं./ ITA No. 371/CHD/2019**

निर्धारण वर्ष / Assessment Year : 2012-13

Shri Pawan Deep Singh, Prop M/s Deep Automobiles, Sirsa	Vs. बनाम	The ITO, Ward-2, Sirsa
स्थायी लेखा सं./PAN NO. AEZPS 2915M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri M.R. Sharma, AR

राजस्व की ओर से/ Revenue by : Sh. Manjit Singh, CIT DR

सुनवाई की तारीख/Date of Hearing : 07.11.2019

उदघोषणा की तारीख/Date of Pronouncement : 07.11.2019

**आदेश/Order**

The present appeal has been preferred by the assessee against the order dated 25.01.2019 of the Commissioner of Income Tax (Appeals)-5, Ludhiana [hereinafter referred to as 'CIT(A)'].

2. The assessee in this appeal has taken following grounds of appeal:-

*1. That the order of Ld. Commissioner of Income Tax (Appeals), being against facts and settled law is liable to be set aside.*

*2. That the Ld. Commissioner of Income Tax (Appeals), erred in confirming reopening of the case, upholding the initiation of proceedings u/s 147/148 of IT Act, 1961 by the Assessing Officer, as no new information was available with him.*

*2.1 That the information/evidence relied upon regarding reopening for disallowance of interest of Rs.6,32,000/- was duly obtained/verified and available before finalizing the original assessment order dated 30.12.2014 in compliance to query raised for charging interest from debtors.*

*2.2 That whole of the information utilized for initiating the proceedings for non payment of VAT of Rs. 7,69,024/- was available on record since the framing of Original Assessment. That non payment of the said sum, in view of the provisions u/s 43B, was a mistake apparent from record and the same was liable to be added u/s 154/155 of IT Act, 1961.*

*2.3 That the squarely applicable decisions of Hon'ble Income Tax Appellate Tribunals relying upon observations of Hon'ble High Courts and Apex Court & mentioned by Ld. Commissioner of Income Tax in his Appellate Order have been fully ignored by him.*

*3. The Ld. Commissioner of Income Tax erred in confirming the disallowance of interest of Rs. 6,32,000/- out of net interest payments of Rs.25,48,527/-, by the Assessing Officer relying on assumptions/conjectures, ignoring the facts on record and written explanations of the appellant for the advances made.*

*3.1 That Ld. Commissioner of Income Tax seems to have ignored the contention of the appellant that the advances for purchases of Agricultural land were made out of interest free capital fund , unsecured loans and trade creditors and none of the advances in current year were made out of withdrawals from bank or other borrowed funds.*

*3.2 The Ld. Commissioner of Income Tax (Appeals) seems to have not considered and appreciated the decisions of Hon'ble Jurisdictional High Court and Hon'ble Tribunal relied upon by the Appellant and incorporated by him in the Appellate Order.*

*4. That the appellant craves leave, with the kind permission of Hon'ble Income Tax Appellate Tribunal, to amend add, alter or modify the Grounds of Appeal till the same is finally heard and disposed-off.*

3. **Ground No.1:** Ground No.1 is general in nature and does not require any specific adjudication.

4. **Ground No.2:** Vide this ground, the assessee has contested the validity of the reopening of the assessment u/s 147 read with section 148 of the Act.

The Ld. Counsel for the assessee, at the outset, has stated that as per the instructions of his client, he does not press ground No.2 regarding reopening of the assessment. Ground No.2 of the appeal is, therefore, dismissed as not pressed.

5. **Ground No.3:** Vide this ground the assessee has contested the addition made by the lower authorities on account of disallowance out of interest expenditure claimed by the assessee by invoking the provisions of section 36(i)(iii) of the Income Tax Act, 1961 (in short 'the Act').

The Ld. Counsel for the assessee, at the outset, has invited our attention to the impugned order of the Assessing Officer as well as of the CIT(A), wherein, both the lower authorities have duly examined and noted the fact that the assessee was possessed of interest free funds totalling Rs. 1.19 crores. The assessee during the year made certain

advances for the purchase of property, however, the total advances made for purchase of the land as stood during the year were at Rs. 1.16 crores. The Assessing Officer was of the view that the assessee had claimed an interest expenditure of Rs. 25,48,527, hence, the disallowance u/s 36(1)(iii) of the Act was attracted on making interest free advances as the assessee might have used loan bearing funds for the same. The plea of the assessee has been that since the assessee was in possession of sufficient own funds, hence, the presumption was that the assessee had used his own / interest free funds for making the aforesaid advances. However, the Assessing Officer presumed that the assessee would have first exhausted the interest free funds towards business assets and thereafter he might have used the interest free funds for making interest free advances for the purchase of property. The issue, however, has been otherwise settled by the various decisions of the higher Courts including that of the recent decision of Hon'ble Supreme Court in the case of 'CIT (LTU) Vs. Reliance Industries Ltd.' [2010] 410 ITR 466 (SC), wherein, the Hon'ble Supreme Court has again confirmed the proposition of law that if the own funds / interest free funds are available with the assessee to meet the investment, presumption will be that the assessee had used its own / interest free funds for the said investment.

In view of this, since the assessee has established that he was possessed of own sufficient or interest free funds to meet the

investment, hence, the disallowance made u/s 36(1)(iii) of the Act is not attracted.

Ground No.3 of the appeal is hereby allowed.

6. **Ground No.4** is general in nature and does not require any specific adjudication.

In the result, the appeal of the assessee is treated as partly allowed.

Sd/-

(संजय गर्ग / SANJAY GARG)  
न्यायिक सदस्य/ Judicial Member

**Dated : 07.11.2019**

“आर.के.”

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