

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “SMC” BENCH

**(BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT
MEMBER & SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 2522/AHD/2017
(Assessment Year: 2013-14)**

Spectoms Engineering Pvt. Ltd. 114, GIDC, Makarpura Road, Vadodara	V/S	Income Tax Officer Ward- 2(1)(3), Vadodara
(Appellant)		(Respondent)

PAN: AACCS 9401Q

**Appellant by : Shri Mehul K. Patel, AR
Respondent by : Shri Vinod Tanwani, Sr. D.R.**

(आदेश)/ORDER

Date of hearing : 03 -09-2019
Date of Pronouncement : 28 -11-2019

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. This appeal filed by the Assessee is directed against the order of the Ld. CIT(A)-2, Vadodara dated 20.06.2017 pertaining to A.Y. 2013-14 and assessee has taken following grounds:

1.0 The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in confirming the disallowance of Rs. 99,143/- on account of deemed interest on the loans and advances given to the associate concern.

2.0 The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in confirming the disallowance of Rs. 31,622/- on account of unpaid service tax of earlier years by erroneously invoking the provisions of section 43B of the I T Act, 1961.

3.0 The learned Commissioner of Income Tax (Appeals) has erred in law and on facts has dismissed the ground relating to initiation of penalty proceedings under section 271(l)(c) of the Income Tax Act, 1961 for the alleged concealment and/or furnishing of inaccurate particulars of income.

4.0 The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in confirming the charging of interest under section 234B and 234C of the Income Tax Act, 1961.

5.0 The appellant craves leave to add to, alter, delete or modify the above ground of appeal either before or at the time of hearing of this appeal.

2. Out of these following grounds, assessee has requested not to press ground no. 3. Therefore, now effective remaining grounds are 1 & 2 and we would like to dispose of the grounds accordingly.
3. Facts of the case are that the assessee is in the business of projects engineers & manufacturing of cattle feed, poultry feeds equipments & storage systems.
4. On perusal of balance sheet it is noticed that the assessee has advanced interest free loans and advances of Rs. 8,26,193/- to firms in which Directors are partners. Therefore, during the course of assessment proceedings, the assessee was show-caused as to why interest at the rate of 12% on interest free advances

to sister concerns should not be charged as it was charged in the A.Y. 2008-09, 2009-10 , 2010-11 & 2011-12 vide ordersheet dated 22/03/2016. In compliance vide submission dated 29/03/2016, the assessee has stated/explained as under:

During the year, company has given interest free advance Rs.8,26,193/- to M/s Tetra Track, associate concerns. The notional interest on such advance amount comes to Rs.99,143/-. In this matter, It is submitted that loans have been given to the associate concerns for business purposes and no part of the interest bearing loans taken from the bank have been diverted to advance interest free loans to the sister concerns. The company had sufficient funds at its disposal to advance such loans. Further such loans have been given in the ordinary course of the business and sister concerns to whom the loan has been advanced are also tax paying assesseees which have not shown any expenditure on account of interest. It is submitted that section 36(i)(iii) of the Act provides for deduction of interest on monies borrowed for computing business income. The conditions that need to be satisfied for allowance of deduction under section 36(i)(iii) During the course of scrutiny, it was observed that service tax payable as on 31/03/2013 was Rs 5,77,24V- . Out of this liability, the assessee has paid Rs 5,45,6i9/-only before filling of I.T. return. Further, it was observed that the assessee has nod disallowed balance of Rs 31,6227- in its computation of income. Therefore, the assessee was asked to show cause as to why the balance of Rs 31,6227- should not be disallowed and added back to your income vide ordersheet dated 22/03/2016 . In response, the assessee submitted its reply vide letter dated 29/03/2016, in which it did not object to the above addition.

4.2 *As such, unpaid service tax liability of Rs 3i,622/- is added back to the income of assessee.6(i)(iii) are that the amount has been borrowed on which interest has been paid and such borrowed amount has been used for the purpose of business.*

5. But ld. A.O. was not agree with the contention of the assessee and made addition of Rs. 99,143/-.
6. Thereafter appeal was filed before the ld. CIT(A) who confirmed the action of the assessing officer.
7. When matter came before us for hearing, assessee cited an order of Co-ordinate Bench in assessee's own case for A.Ys. 2006-7, 07-08, 09-10 & 2010-11 in ITA Nos. 836/Ahd/2012, 06/Ahd/2011, 2627/Ahd/2012 & 562/Ahd/2014 wherein in similar facts and circumstances relief was given to the assessee with following observations:

6. During the course of assessment proceedings the assessing officer noticed that assessee had given loan and advances to its sister concerns to the tune of Rs. 1,33,33,689/- as on 31st March, 2007 but not charged any interest. Therefore, the assessing officer has charged notional interest @ 12% of Rs.16,00,763 on the balance of outstanding loan on the ground that interest bearing funds were advanced to its sister concerns.

7. Aggrieved assessee preferred appeal before the ld. CIT(A). The ld. CIT(A) has sustained the addition to the extent of Rs. 12,04,742/- after excluding the interest charged of Rs.1,56,262 on the customer balance representing sale made earlier year of Rs. 13,02,182/-.The ld. CIT(A) has sustained the part of the addition on the ground that assessee had given interest bearing funds to its sister concerns on which it was paying interest to the bank.

8. We have heard rival contentions and perused the material on record carefully. We observed that assessee has provided a loan to its sister concern as supra in this order of Rs. 1,33,39,689/-. The assessee has charged interest on the

above loan from the assessment year 2002-03 to 2005-06. The assessee has stopped charging interest on the aforesaid loan on the reasoning that preceding year interest was not recovered. On an analysis of the accounts, it came to our notice that assessee has availed loan from the banks and forwarded this loan to sister concern from whom it has not recognized the interest income on the ground that sister concern has stopped paying any interest to the assessee. It is pertinent to observe that the assessing officer has not doubted the genuineness of the transaction i.e. taking loan from the banks and forwarding it to the sister concern. The assessing officer has not made any inquiry whether interest expenditure relatable to the loan's deduction from the accounts and given to the sister concern is an allowable deduction or not in the present scenario? We further find that assessee has been following mercantile system of accounting and agreed that system while recognizing the interest income on accrual basis. In the past, it has been recognized interest income, however, on account of its non-realization, assessee has claimed bad debt of those interest incomes which have been recognized on accrual basis and included in the taxable income as bad debt of the assessee of those interest incomes has been allowed by the Id. CIT(A) and not disputed by the revenue in further appeal. In assessment year and subsequent years, assessee has stopped charging interest and accounting it in the income on accrual basis. This is not a sound accounting policy as at outset it should have been recognized the same as income on accrual basis and thereafter would have given the deduction of claim of bad debt which the assessee failed in these years. Further, when we visualize this situation as a whole traveling from three assessment years, then, it is observed that interest income was recognized on accrual basis and thereafter claimed as a bad debt of its non-realization, this has been allowed by Id. CIT(A). If we remit the issue to the file to assessing officer in subsequent years by holding that income is to be recognized on accrual basis and thereafter, it is to be claimed as bad debt whether allowable or not, then, to our mind, it will be an academic and futile

exercise because in reality assessee has not received any interest income from its sister concern. It is to be recognized that in all the aforesaid three years the income from interest on accrual basis remained unrecoverable which was allowed as a bad debt. Thus, in order to avoid multiplicity of the proceedings, we allow the appeal of the assessee on this issue accordingly.

8. In parity with the Co-ordinate Bench order in assessee's own case in similar facts and circumstances, we allow this ground of appeal of the assessee and direct Assessing Officer to delete the addition of Rs. 99,143/-.
9. Now we come to ground no. 2 relating to confirming the disallowance of Rs. 31,622/- on account of unpaid service tax of earlier years by erroneously invoking the provisions of section 43B of I. T. Act.
10. During the course of scrutiny, it was observed that service tax payable as on 31/03/2013 was Rs 5,77,241/- . Out of this liability, the assessee has paid Rs 5,45,619/- only before filing of I.T. return. Further, it was observed that the assessee has not disallowed balance of Rs 31,622/- in its computation of income. Therefore, the assessee was asked to show cause as to why the balance of Rs 31,622/- should not be disallowed and added back to your income vide order sheet dated 22/03/2016. In response, the assessee submitted its reply vide letter dated 29/03/2016, in which it did not object to the above addition.
11. As such, unpaid service tax liability of Rs 31,622/- is added back to the income of assessee.

12. Thereafter appeal was filed before the ld. CIT(A) who confirmed the action of the ld. A.O. as no details were furnished before the lower authorities.

13. We have gone through the relevant record and impugned order and heard both the parties. Before ld. A.O. in response to the notice, assessee submitted in its reply letter dated 29th October, 2016 in which it did not object to the addition of Rs. 31,622/- and even before ld.CIT(A) and as no details have been furnished in support of its contention. Therefore, this ground of appeal of the assessee is dismissed.

14. In the result, appeal filed by the Assessee is partly allowed.

Order pronounced in Open Court on	28- 11- 2019
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Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER **True Copy**

Ahmedabad: Dated 28/11/2019

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad