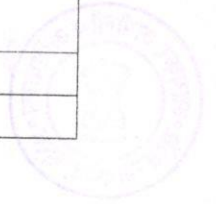


**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT**

**Before Shri C.M.GARG, Judicial Member, and
Shri O.P. MEENA, Accountant Member**

**ITA No.1739/AHD/2016/SRT
Assessment Year: 2012-13**

Shri Ashok Poddar, Prop of M/s Shreepati Textiles, J - 3060, Surat Textiles Market, Ring Road, Surat.	बनाम/ Vs.	ITO, WARD - 1(2)(1), Surat
(Appellant)		(Respondent)
PAN. AIZPP0125E		



Assessee by	Shri Vinod Goyal - CA
Revenue by	Shri O. P. Meena, Sr. DR
Final Date of Hearing:	24/01/2018
Date of Order:	06/02/2018

आदेश / ORDER

Per Shri C.M. Garg, J.M:

This appeal filed by the assessee against the order of the learned CIT (Appeals) - II, Surat, dated 13.04.2016 passed under section 143(3) of the Income Tax Act, 1961 for the assessment year 2012-13.

2. In this appeal the assessee has raised the following arguments/contentions/grounds of appeal:-

- (i) Disallowance of Rs. 1,41,494/- of Interest Expenses
The Learned Assessing Officer has erred in law and on facts in making in making disallowance of Rs.

1,41,494/- claimed as interest expense in spite the payment is made for borrowed funds exclusively for the business purpose.

(ii) Disallowance for Rs. 1,86,541/- U/s 40(a)(ia) of the Act.

The Learned Assessing Officer has erred in law and on facts in making in making disallowance of Rs. 1,86,541/- U/s 40(a)(ia) in spite of assessee is not deemed to be in default u/s 201(1) of the Act.

(iii) Disallowance for Rs. 33,873/- U/s 40(a)(ia) of the Act.

The Learned Assessing Officer has erred in law and on facts in making in making disallowance of Rs. 33,873/- U/s 40(a)(ia) in spite of submitting Form No. 15G or 15H

Ground No. (i)

3. Aprpose ground no. (i) the Ld. Assessee's Representative (AR) submitted that it is not disputed by the Assessing Office as well as CIT (A) that the borrowed funds were used for business purposes hence, the interest of Rs. 1,41,494/- is allowable u/s 36(1)(iii) of the Act. The Ld. AR also contended that merely because the assessee has claimed the interest u/s 57 of the Act the disallowance cannot be made by taking a hyper technical approach. The Ld. AR has placed reliance on the following: -

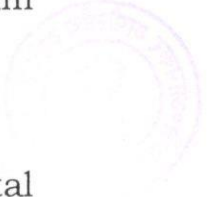
- (i) CBDT's Circular No. 14(XL-35) dated 11/04/1995
- (ii) Choksi Metal Refinery Vs. CIT (1977) 107 ITR 63(GUJ)
- (iii) Smt raj Rani Gulati Vs CIT (2012) 346 ITR (Allahbad)
- (iv) ACIT Vs Smt Asha Ashok Boob (2015) 59

taxmann.com 173 (Pune - Trib.)

4. The Ld. AR submitted that disallowance of Rs. 1,41,494/- was made out of interest paid by the assessee despite the fact the Assessing Officer has not disputed that borrowed funds were exclusively used for business purpose hence, the same are allowable u/s 36(1)(iii) of the Act. The Ld. AR further submitted that merely because the assessee has claimed interest expenditure u/s 57 of the Act wrongly the valid claim of assessee cannot be dismissed.

5. Replying to the above, the Ld. Departmental Representative (DR) strongly supported the orders of the authorities below and submitted that the interest expenses do not enjoy the benefits of section 57 of the Act and hence, the same was not allowable under the income from other sources. The Ld. DR also submitted that the assessee had not made any claim of these interest expenses under the head income from business or profession hence, the same was not allowable u/s 37 of the Act. The Ld. DR further submitted that the unsecured loans corresponding to the interest expenses were not reflecting in the business balance sheet of proprietary business concern therefore, the same was not allowable.

6. Placing rejoinder to the above, the Ld. AR submitted that the assessee has earned income from interest which was declared under the head income from other sources and the assessee also earned income from proprietorship business concern and income there from was shown as income from



business or profession. The Ld. AR further pointed out that before the Assessing Officer the assessee vide order sheet entry dated 11/02/2015 inform that the funds were used for business hence, the same is allowable as business expenditure, thus, claim of assessee may kindly be allowed u/s 36(1)(iii) of the Act in view of the CBDT Circular dated 11/04/1955 (Supra) as the revenue must not take advantage of ignorance of the assessee as to his rights. The Ld AR also submitted that as per decision of ITAT, Pune in the case of ACIT Vs Smt Asha Ashok (Supra) where assessee made claim of deduction wrongly under other provision the same could not be a ground to deny benefit of deduction under the relevant applicable head.

7. On careful consideration of above submissions we observe that the main thrust and ground for rejection of claim of assessee taken by the authorities below is that the assessee has claimed the interest expenditure u/s 57 of the Act and the unsecured loan corresponding to the above interest expenses are not reflecting in the business balance sheet. However, we may point out that the authorities below have not brought any allegation or fact on the record that the funds on which interest has been paid was not used for the purpose of business of the assessee and this fact was brought to the notice of Assessing Officer by the assessee through its AR on 11/02/2015 that the funds on which interest has been paid was used for the business purpose. In this situation, we are inclined to hold that as per letters and spirit of CBDT Circular

dated 11/04/1955 (Supra) the Revenue Authorities cannot take advantage of ignorance of the assessee pertaining to the relevant provisions wherein assessee's claim is allowable. The Hon'ble Allahabad High Court in the case of Smt Rajrani Gulati Vs CIT (Supra) has held that the CBDT Circular safeguards the rights of the assessee and even under the bonafide belief, the assessee has made lesser claim than it is expected from the Assessing Officer to treat the claim under right and latest amended provisions.

8. So far as non reflection of creditors in the firm balance sheet is concerned, for income tax purposes individual assessee and his proprietorship firm comes within the same umbrella and hence no separate PAN is allotted to the proprietorship firm. In this situation when the funds have been used for the business purpose and the income from business has been offered for tax then the interest expenditure so incurred by the assessee is allowable u/s 36(1)(iii) of the Act. Merely because the assessee made a claim under wrong head and provision the genuine claim of the assessee cannot be dismissed on hyper technical grounds. Our conclusion also gets support from the preposition laid down by ITAT Pune in the case of ACIT Vs Smt Asha Ashok (Supra). Accordingly ground no. i of the assessee is allowed and the Assessing Officer is directed to allow the interest expenditure under head of income from business or profession to the assessee.



Ground No. (ii) & (iii)

9. The Ld. AR submitted that the Assessing Officer has erred on the facts making disallowance of Rs. 1,86,541/- u/s 40(a)(ia) in spite of assessee is not deemed to be in default u/s 201(1) of the Act. The Ld. AR further submitted that the Ld. Assessing Officer has erred in law and on facts in making disallowance of Rs. 33,873/- u/s 40(a)(ia) in spite of submitting Form No. 15G or 15H. The Ld. AR also submitted that the issue in ground no. ii is covered by the decision of Hon'ble Delhi High Court in the case of CIT Vs Ansal Landmark Township reported as 279 CTR (Del) 384 as the second proviso to section 40(a)(ia) is declaratory and curative and it has retrospective effect from 1-4-2005. Since payee had filed return and offered sum received from assessee to tax, impugned disallowance made under section 40(a)(ia) deserved to be deleted. The Ld. AR also submitted that in the present case, the ground no. iii is also covered by the decision of Hon'ble Gujarat High Court in the case of CIT Vs Valibhai Khanbhai Mankad (2012) 28 taxmann.com 119 (Gujarat) as where assessee has fulfilled requirement of second proviso to the section 194C(3) disallowance of payment for sub-contractor cannot be made on ground that assessee had not furnished form no 15 J before 30/06/2006 as required under rule 29D of the Income Tax Rules 1962.

10. Replying to the above, the DR supported the orders of the authorities below.

11. On careful consideration of above rival submissions we are of the view that the Assessing Officer has made disallowance on failure of the assessee to make TDS but when the payee has shown the income and has paid tax thereon then the assessee cannot be deemed to be in default u/s 201(1) of the Act. The Hon'ble Delhi High Court in the case of Ansal Land Mark (Supra) held that the second proviso to section 40(a)(ia) of the Act is retrospective therefore respectfully following the same we hold that when the payee has shown the receipt as his income and has also paid tax thereon then no disallowance can be made in the hands of payer. Therefore, the addition is directed to be deleted. However, we also make it clear that since the Assessing Officer had no opportunity to verify the factum of declaration and payment of tax by the assessee on the impugned receipts therefore the ground is restored to the file of Assessing Officer for limited purpose of verification that if the payee has shown the income in his return and has paid tax thereon then the benefit of second proviso be given to the assessee. Accordingly, ground no. ii is allowed for statistical purposes for limited verification as directed above.

12. In the present case the assessee submitted Form No. 15G and 15H on 10/04/2012 due to continues public holidays from 5th April to 8th April and this fact has not been disputed by the Assessing Officer therefore, in view of ratio of the decision of Hon'ble Jurisdictional High Court in the case of Balibhai Khanbhai (supra) the Assessing Officer is directed to

8. Shri Ashok Poddar
ITA No.1739/A/2016

delete the disallowance made on account of delay filing of Forms. Accordingly, ground no. iii is allowed.

13. In the result, appeal is allowed (partly for statistical purposes) in the manner as indicated above.

Order pronounced in the open court on 06/02/2018



Sd/-
(O.P. Meena)
ACCOUNTANT MEMBER

Sd/-
(C.M. Garg)
JUDICIAL MEMBER

दिनांक /Dated : 06th February, 2018

Nhanu/LDC

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Sr. Private Secretary, Surat

वरिष्ठ निजी सचिव
आयकर अपीलीय अधिकरण
सुरत न्यायपीठ, सुरत.