

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य
BEFORE: SHRI. N.K.SAINI, VP & SHRI , SANJAY GARG, JM

आयकर अपील सं./ ITA NO. 1177/Chd/2017

निर्धारण वर्ष / Assessment Year : 2012-13

M/s Sriyansh Knitters Private Ltd. H-7, Textile Colony, Ludhiana	बनाम	The ACIT Circle-VII, Ludhiana
स्थायी लेखा सं./PAN NO: AACCS4628K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Rajiv Sharma, Advocate

राजस्व की ओर से/ Revenue by : Smt. Geetinder Mann, JCIT

सुनवाई की तारीख/Date of Hearing : 22/01/2020

उद्घोषणा की तारीख/Date of Pronouncement : 22/01/2020

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

This is an appeal by the Assessee against the order dt. 31/05/2017 of Ld. CIT(A)-3, Ludhiana.

2. Following grounds have been raised in this appeal:

1. That the order of learned Commissioner of Income Tax (Appeals)-3, Ludhiana dated 31.05.2017 is wrong against law and facts of the case.

2. (a) That the learned Commissioner of Income Tax (Appeals)-3, Ludhiana erred in confirming addition on account of disallowance of interest expenses of Rs.2,88,000/- by wrongly applying the case of M/s. Abhishek Industries Ltd. When these expenses relate to trade and were advances for construction to Sh. Kirpal Singh.

(b) That the appellant has categorically explained that these advances relate to trade for construction of guest house, which has not been completed during the assessment year under consideration, but has been completed subsequently. Hence the learned Commissioner of Income Tax (Appeals)-3 failed to appreciate the facts and erred in confirming the addition.

(c) That the appellant has agreed to addition on account of unvouched expenses and not to disallowance of interest under section 36(I)(iii) of the Income Tax Act, 1961 as per grounds in foregoing paras, (d) The learned CIT (Appeals)

erred in dismissing this ground regardless of fact that on same issue the appeal has been allowed in assessment year 2011-12 and assessment year 2013-14.

3. That the appellant craves to amend, alter, delete or supplement any ground of appeal before the appeal is finally heard and disposed off.

3. From the aforesaid grounds it is gathered that the only grievance of the assessee relates to the confirmation of addition on account of disallowance of interest amounting to Rs. 2,88,000/-.

4. Facts of the case in brief are that the assessee was deriving income from manufacturing & Sale of Hosiery Goods and filed its return of income on 28/09/2012 declaring an income of Rs. 1,26,67,980/- under normal provisions and Rs. 1,30,93,247/- under section 115JB of the Income Tax Act, 1961 (hereinafter referred to as 'Act'). Later on the case was selected for scrutiny. The A.O. during the course of assessment proceeding noticed that the assessee had given interest free advances of Rs. 24,00,000/- for non business purposes, therefore the proportionate interest was to be disallowed under section 36(1)(iii) of the Act, in view of the judgment in the case of M/s Abhishek Industries Ltd. reported at 286 ITR 1.

5. The A.O. in para 2.2 of the assessment order dt. 20/02/2015 observed that the counsel for the assessee had agreed that the said addition should be made to the total income of the assessee. The A.O. worked out the amount of interest at Rs. 2,88,000/- i.e; 12% of Rs. 24,00,000/- for 12 months and made the addition u/s 36(1)(iii) of the Act, in the hands of the assessee.

6. Being aggrieved the assessee carried the matter to the Ld. CIT(A) who also sustained the addition by observing in para 4.3 of the impugned order as under:

4.3 I have carefully considered the appellant's submission. I have also gone through the assessment order. It is seen that during the course of assessment proceedings the assessee has itself offered for agreed addition as it has clearly been mentioned in the assessment order. Therefore, in my considered view the appellant has no case for appeal as it has itself agreed for the addition to be

made in its income at the time of assessment proceedings. There are several judicial pronouncements confirming this view. Further, the appellant during the course of the appellate proceedings has mentioned and relied upon the order of CIT(A)-4, Ludhiana in the case of its own concern. I am not inclined to agree with the contention of the appellant. In its written, submission the appellant has miserably failed to explain any commercial expediency or any business relation of advance of Rs. 24 lac, to Sh. Kirpal Singh. It is observed that Neither the appellant has explained the position of interest free funds at the time of advancement of loans. Neither any commercial expediency has been explained by the appellant, while advancing these advances to Sh. Kirpal Singh. At the same time this fact goes against the probability of advancing huge sum to an individual for construction of guesthouse which was yet to take place. The appellant has not been able to substantiate's claim in this regard. Accordingly, the disallowance of Rs.2,88,000/- u/s 36(1) (iii) of the Act on account of interest free loans and advance is ordered to be confirmed. These grounds of appeal are dismissed.

7. Now the assessee is in appeal.

8. Ld. Counsel for the assessee submitted that the assessee was having surplus funds out of which interest free advances were given therefore the disallowances made by the A.O. and sustained by the Ld. CIT(A) was not justified. It was stated that the assessee never agreed for the addition, in support of this submission, copies of order sheets were furnished which are placed on the record. It was also stated that similar additions made by the A.O. in the preceding A.Y. 2011-12 and succeeding A.Y. 2013-14 have been deleted by the Ld. CIT(A).

9. In her rival submissions the Ld. DR submitted that the assessee itself agreed for the addition and no reason has been given for deviating from the said stand taken by the assessee before the A.O.

10. We have considered the submissions of both the parties and perused the material available on the record. In the present case it is noticed that in the copies of the order sheets placed at page no. 1 to 7 of the assessee's paper book, nowhere it is mentioned that the assessee agreed for the addition. It is also noticed that the claim of the assessee before the A.O. as per the order sheet entry dt. 19/02/2015 was that the advances to Shri Kirpal Singh were given

for the construction of guest house. Therefore by considering the contradictory stand of the A.O. i.e. the assessee admitted for addition and the claim of the assessee that no such admission was made for making the addition and this plea that non interest bearing funds were available with the assessee. We deem it appropriate to set aside this issue back to the file of A.O. to be decided afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

11. In the result, appeal of the assessee is allowed for statistical purposes.

(Order pronounced in the open Court on 22/01/2020)

Sd/-
संजय गर्ग
(SANJAY GARG)
न्यायिक सदस्य/ Judicial Member
AG
Date: 22/01/2020

Sd/-
एन.के.सैनी,
(N.K. SAINI)
उपाध्यक्ष / VICE PRESIDENT

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