

56

आयकरअपीलीयअधिकरण,सुरतन्यायपीठ,सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

श्रीसी.एम.गर्ग,न्यायिकसदस्यतथाश्रीओ.पी.मीना, लेखासदस्यकेसमक्ष
BEFORE SHRI C.M.GARG, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No.2168/AHD/2014	निर्धारणवर्ष/Assessment Year : 2001-02
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M/s.Avon Enterprise, 43,44, Panam Plaza, Station Road, Bharuch. PAN: AAFA0196R अपीलार्थी Appellant	Vs.	The Income Tax Officer, Ward-1, Bharuch. प्रत्यर्थी/Respondent
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निर्धारितकीओरसे /Assessee by	S/Shri Devangkumar N.Suthar, Adv. & D.C.Dalal, Adv.
राजस्वकीओरसे /Revenue by	None.

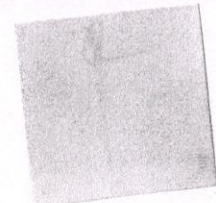
सुनवाईकीतारीख/ Date of hearing:	20.02.2018
उद्घोषणाकीतारीख/Pronouncement date	21.02.2018

आदेश / ORDER

PER O. P. MEENA, ACCOUTANT MEMBER:

This appeal by the assessee against the order of CIT(A)-1, Baroda, dated 14.02.2014 for the assessment year 2001-02.

2. The assessee has taken the grounds of appeal against the disallowance of interest of Rs.5,51,340/-. However, these grounds of appeal were revised by way of filing additional grounds of appeal by stating that the CIT(A) has heard in law on facts in confirming the disallowance of interest paid to partners of Rs.5,51,340/- whereas the assessee was maintaining current account with P.D.Shroff. The transactions with the P.D.Shroff are purely commercial transactions and no interest was charged on the amount. The Assessing Officer has also directed calculation on notional interest and addition in total income. The assessee has also relied on the




decision of ITAT, Ahmedabad in the case of M/s.Ashraya Enterprises vs. ITA.Nos.2766 & 2767/Ahd/2006.

3. Since the original grounds as well as additional grounds of appeal are revolves around the facts to the confirmation of disallowances of interest of Rs.5,51,340/- paid to partners as against non-charging of interest on loans and advances paid to M/s.P.D.Shroff. Therefore, the above grounds are being considered together for the sake of convenience brevity.

4. Brief facts of the case are that the assessee is engaged in the business of construction work. The Assessing Officer noticed from the balance sheet of the assessee that the assessee has given loan and advances to M/s.P.D.Shroff and no interest was charged on this account. Whereas, interest is being paid to partners @ 18% totaling to Rs.5,51,340/-. It was explained that the interest was not charged because of their business relationship with P.D.Shroff. However, the Assessing Officer was of the view that the assessee firm has paid interest to partners and funds have been diverted to M/s.P.D.Shroff with whom the assessee firm has admittedly a close relationship. The Assessing Officer, further obtained a working of notional interest on the loans given to P.D.Shroff @ 12% according to which the notional interest was worked out at Rs.6,35,804/- as per table given in para 3 of the assessment order. However, since the interest claim was made for Rs.5,51,340/-. Hence, the Assessing Officer made disallowance of said account as the said interest was not incurred for the purpose of business, but for diverting funds through advances M/s.P.D.Shroff(supra).

5. The assessee filed appeal before CIT(A). However, the CIT(A) vide his order No.CAB/IV-101/03-04 dated 08.09.2005, has confirmed the disallowances by observing that the assessee has failed to file copy of partnership deed. Therefore, in absence of the same interest paid to the partners @ 18% at Rs.5,51,340/- is not justified. More so, when no interest was being charged on the loans/advances ranging from Rs.5,55,644/- to 46,35,644/- given to M/s.P.D.Shroff during the year.



6. Aggrieved with CIT(A), the assessee filed an appeal before ITAT. The ITAT vide order in ITA No.2316/Ahd/2005 dated 19.09.2008 set-aside the issue to the file of the CIT(A) with a direction to re-adjudicate the issue after taking into consideration the partnership deeds produced before Tribunal. In compliance thereof, the CIT(A) has passed impugned order dated 14.02.2014. It was claimed before the CIT(A) by the AR of the assessee that the assessee has not borrowed money from anyone and interest to partners was credited on their capital standing in accounts in accordance with the provisions of sec.40(b) of the Act. However, the CIT(A) has observed that the submission of the AR of the appellant is not found to be tenable. The admitted facts is that the partners capital account has not been utilised by the appellant firm for its business and the same has been advance to P.D.Shroff without charging any interest. If the appellant firm is paying interest to the partners on the capital which was required to be utilized for its business and such capital of the partners have been advanced to P.D.Shroff and Company without charging any interest, then it can be said that such capital of the partners were diverted to P.D.Shroff for non business purposes. Therefore, the CIT(A) was of the opinion the Assessing Officer has correctly made addition of Rs.5,51,340/- by way of making disallowance of interest paid to partners.
7. Being aggrieved, the assessee has filed its appeal before us. The Id.AR for the assessee re-treated the submissions as made before the CIT(A). The Id.AR also placed reliance on decision in the case of Ashraya Enterprises vs. ITO, Ward-1 (supra) in which eligible interest paid to P.D.Shroff reduced from the eligible profit u/s.80IB of the Act was allowed.
8. We have considered the facts and perused the material available on record. It is seen from the copy of loan account with M/s.P.D.Shroff which were ranging from opening balance of Rs.5,55,644/- to the closing balance of Rs.46,35,644/-. The Assessing Officer has worked out notional interest @ 18% amount of Rs.6,35,840/- that would have been charged on the loan given to M/s.P.D.Shroff whereas the assessee has paid interest to partners at Rs.5,51,340/- @ 18%. It is also discernable from the assessment order para 3 that the assessee firm had admittedly close

relationship with M/s.P.D.Shroff to whom partners capital have been diverted which was required to be utilized for its business purposes, without charging any interest. The perusal of copy of loan and advance with P.D.Shroff (PB-7) also shows that the assessee has paid advance tax for the financial year 1999-2000 on behalf of M/s.P.D.Shroff.

9. In view of the above facts and circumstances, we find that the CIT(A) was right in observing that the partners capital account has not been utilized by the assessee firm for its business and the same has been used for advance to P.D.Shroff without charging any interest. If the assessee was paying interest to the partners on their capital which was required to be utilized for its business purposes and such capital of the partners have been advanced to P.D.Shroff and Company without charging any interest. Then, it can be held that such capital of the partners was diverted to P.D.Shroff account for non-business purposes. In view of these facts, we are in agreement with the findings of the Id.CIT(A) that the Assessing Officer has correctly made addition of Rs.5,51,340/- by way of making disallowance of interest. Accordingly, all the grounds of appeal with the additional grounds of appeal therefore dismissed. The decision in the case of M/s.Ashraya Enterprises (supra) was given in the context of reduction of interest to partners for computing eligible profit u/s.80IB of the Act, hence, not applicable.

10. In the result, appeal of the assessee is dismissed.

The order pronounced in the open Court on 21-02-2018

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

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

सुरत/ Surat, दिनांक Dated: 21-02-2018

Copy of order forwarded to- Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, Surat