

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH
MUMBAI**

BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER

**ITA No.771/Mum/2019
(Assessment Year: 2015-16)**

M/s Red Rose Enterprise, Room No. 7, 3 rd Floor, Jenabhai (Gaya) Bldg. 87/123, Y.M. Road, Masjid Bunder, Mumbai- 400003	Vs.	I.T.O.-17(3)(1) Room No. 114, 1 st Floor, Aayakar Bhavan, M.K. Road, Mumbai.
PAN/GIR No. AADFR 5541 G		
(Appellant)	..	(Respondent)

Assessee by	Radha Halbe (Adv)
Revenue by	Shri R.K. Gubgotra (JCIT-DR)
Date of Hearing	05/02/2020
Date of Pronouncement	06/02/2020

आदेश / ORDER

PER: R.C. SHARMA, A.M.

This appeal by the assessee is directed against the order dated 13/12/2018 of Id. CIT(A)-28, Mumbai for the A.Y. 2015-16 in the matter of order passed U/s 143(3) of the Income Tax Act, 1961 (in short, the Act).

2. In this appeal, the assessee is aggrieved for disallowance of interest U/s36(1)(iii) of the Act amounting to Rs. 2,56,570/-.

3. Rival contentions have been heard and record perused. From the record, I found that the A.O. has disallowed proportionate interest expenditure claimed in the P&L account on the plea that the assessee

has diverted fund for non-business purposes. I also found that during the year under consideration, balance sheet of the assessee reflected loans and advances given to following parties from which no interest had been charged.

Sl. No.	Name of the party	Loan amount in Rs.
1.	Chandrakala B Gandhi	4,10,000
2.	Sahara Silk Industries	15,00,000
3.	Devendra Associates	1,40,000
4.	S.D. International	3,00,000

It was contention of the Id AR that the advances were given for the purpose of business. The contention of the Id. AR was as under:

We had given the loan/advance to the following parties for the following reasons:"

Sahara Silk- Advance given for fabrics to be delivered which was not as the approved cut and the amount of Rs. 15 lakhs is to be refunded; till date 11.95 lakhs have been refunded. Annexure 1 attached for the same.

Devendra Associates- Advance was given as a deposit towards an office which was cancelled and the said amount was refunded. Annexure 2 attached for the same.

S D International- Advance was given as an appointment of agent for transactions of a specific chemical tender with Overseas chemical/Dyes supplier which did not materialize and S D International was not able to get any suppliers. Hence the amount was refunded. Annexure-3e attached for the same.

Chandrakala Gandhi- Advance given for onward booking and confirmation of a chemical tender which did not crystallise and hence the amount stands refundable. Annexure-4 attached for the same.

Our attention was invited to the letters filed by the respective parties indicating that the advances for business purposes, however, the Id DR has objected that these documents were not produced before the lower authorities, therefore, the same constitute additional evidence which cannot be accepted at the level of Tribunal. However, I found that these documents goes to the root of the issue, therefore, in the substantial interest of justice, I restore the matter back to the file of the A.O. for deciding afresh after considering all these evidences so filed by the assessee to the effect that the advances were given for the purpose of business. Needless to say, the assessee be given appropriate opportunity of hearing before deciding the issue.

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

Order pronounced in the open court on 06th February, 2020.

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 06/02/2020

*Ranjan

Copy of the Order forwarded to :

1. The Appellant

2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai