

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

श्री संजय गर्ग, न्यायिकसदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य  
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND  
Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपीलसं./ITA No.885/CHD/2019

निर्धारणवर्ष / Assessment Year : 2015-16

M/s Stovekraft India, 307/2, Village Buranwala, Barotiwala, Baddi, Distt. Solan H.P.	बनाम	The DCIT, Circle, Parwanoo
स्थायीलेखासं./PAN NO: AAZFS6497G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे/Assessee by : ShriManoj Kumar, CA

राजस्वकीओरसे/ Revenue by : ShriAbhishek Pal Garg, Addl CIT

सुनवाईकीतारीख/Date of Hearing : 02.03.2020

उदघोषणाकीतारीख/Date of Pronouncement : 20.05.2020

**आदेश/Order**

**Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 29.3.2019 of the Commissioner of Income Tax (Appeals), Shimla[hereinafter referred to as 'CIT (A)'].

2. The assessee in this appeal has taken following grounds of appeal:

1. The Ld. CIT(A) is wrong in confirming the addition made by the ld. AO by disallowing interest of Rs. 17,01,714/-u/s 36(1) (iii) on

*account of interest free advances of Rs. 1,41,80,951/-, ignoring the undisputed fact that advance was made to one of the partner (i.e. Mr. Rajendra J. Gandhi) of the assessee firm.*

*2. Without prejudice to ground No.1, the Ld. CIT(A) is wrong in confirming the addition made by the ld. AO by disallowing interest of Rs. 17,01,714/- u/s 36(1) (iii) on account of interest free advances of Rs. 1,41,80,951/- by applying arbitrarily interest rate @ 12 % on advances instead of applying average cost debt.*

3. The sole issue raised by the assessee in this appeal is regarding disallowance of Rs. 17,01,714/- by the Assessing Officer and further confirmed by the CIT(A) on account of disallowance of notional interest expenditure u/s 36(1)(iii) of the Income Tax Act.

4. The brief facts relating to the issue are that the Assessing Officer during the assessment proceedings noticed that the assessee firm had a debit balance of Rs. 1,41,80,951/- advanced to one of its partners namely M/s Rajindra J. Gandhi under the head 'Loan and Advances' on which no interest was charged, whereas, the assessee firm had claimed finance cost of Rs. 35,49,756/- on the loan debited in the profit and loss account. The Assessing Officer, therefore, made a disallowance of interest expenditure u/s 36(1)(iii) of the Income Tax Act in respect of the interest free amount advanced by the assessee firm to its partners.

The disallowance so made by the Assessing Officer was further confirmed by the Ld. CIT(A).

5. Before us, the Ld. Counsel for the assessee has submitted that while making the impugned disallowance, the lower authorities totally ignored the fact that though there was an interest free advance of Rs. 1,41,80,951/- to one of the partners namely ShriRajindra J. Gandhi, however, at the same time, the assessee also had a credit capital balance of other partner Softkraft Pvt Ltd of Rs. 6,90,67,365/-, which was much more than the amount advanced of Rs. 1,41,80,951/-. Under the circumstances, there was a reasonable presumption that the amount from the capital of the other partner was advanced. The Ld. Counsel has further submitted that no interest was paid by the firm on the said capital introduced by the other partner. It has been further pleaded that even otherwise the total interest free amount available with the firm at the opening of the year was at Rs. 23.50 cores and at the close of the year was Rs.6.90 cores and that the firm had sufficient funds to make the interest free advance of Rs. 1,41,80,951/- to one of the partners.

The Ld. Counsel in this respect has relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of 'CIT Vs. Kapsons Associates' 79 taxman.com 364 (P&H), Shelly Bansal vs DCIT, Chandigarh ITA No. 1110/Chd/2016, M/s Torque Pharmaceuticals

Pvt Ltd vs Addl CIT - ITA No. 671/Chd/2011 and M/s Sansui Electronics (ITAT Order in ITA No.897/Chd/2014).

6. The Ld. DR, on the other hand, has relied on the findings of the lower authorities

7. We find that the issue is squarely covered by the various decisions of the High Courts as well as of the apex court of the country including that of the Hon'ble Jurisdictional High Court in the case of 'Bright Enterprises Pvt. Ltd Vs. CIT, Jalandhar' (supra), 'CIT Vs. Kapsons Associates' (2016) 381 ITR 204 (P&H) and the latest decision of the Coordinate Bench of the Tribunal in the case of 'ACIT Vs. Janak Global Resources Pvt Ltd' ITA No. 470/Chd/2018 order dated 16.10.2018, holding that that if the assessee is possessed of sufficient own interest free funds to meet the investments / interest free advances, then, under the circumstances, presumption will be that interest free advances / investments have been made by the assessee out of own funds / interest free funds. Reliance in this respect can also be placed on the decision of the Hon'ble Supreme Court in the case of 'Hero Cycles (P) Ltd Vs. CIT' 379 ITR 347 (SC) and also on the latest decision of the Hon'ble Supreme Court in the case of 'CIT (LTU) Vs. Reliance Industries Ltd.' [2019] 410 ITR 466 (SC). Thus, as per the settled law no disallowance u/s 36(1)(iii)

of the Act is warranted on this issue. The disallowance made by the AO on this issue is ordered to be deleted. This issue is accordingly allowed in favour of the assessee.

In the result, the appeal of the assessee stands allowed

Order pronounced on 20.05.2020.

Sd/-

(अन्नपूर्णा गुप्ता / ANNAPURNA GUPTA)  
लेखा सदस्य/ Accountant Member

Sd/-

(संजय गर्ग / SANJAY GARG)  
न्यायिक सदस्य/ Judicial Member

**Dated : 20.05.2020**

“आर.के.”

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT,  
CHANDIGARH
6. गार्डफाईल/ Guard File