

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR
श्री रमेश सी शर्मा, लेखा सदस्य एवं श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./ ITA No. 878/JP/2017
निर्धारण वर्ष / Assessment Year :2013-14

Shri Kedar Prasad Khandelwal, Prop.-M/s Shri Ram Traders, Newai, Distt. Tonk.	बनाम Vs.	D.C.I.T., Circle-7, Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: ACRPK 8777 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mahendra Gargieya (Adv)
राजस्व की ओर से / Revenue by : Shri B.K. Gupta (CIT-DR)

सुनवाई की तारीख / Date of Hearing : 03/09/2020
उदघोषणा की तारीख / Date of Pronouncement : 15/09/2020

आदेश / ORDER

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

This is an appeal filed by the assessee against the order of Id. CIT(A)-3, Jaipur dated 01/09/2017 for the A.Y. 2013-14 in the matter of order passed U/s 143(3) of the Income Tax Act, 1961 (in short, the Act).

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. In this appeal, the assessee is aggrieved for disallowance of Rs. 26,21,505/- U/s 36(1)(iii) of the Act and also disallowance of various expenses debited in P&L account amounting to Rs. 77,395/-.

4. Rival contentions have been heard and record perused. Facts in brief are that the assessee is a commission agent (Pakka Adatiya) and engaged in the business of Trading of Oil Seeds. The assessee filed its return of income ("return" in short) declaring total income of Rs.1,61,54,910/- on 30.09.2013. The return was processed and was subsequently taken up for scrutiny. However, the assessment was completed at Rs.1,89,31,205/- by disallowance of interest of Rs. 26,21,505/- out of interest debited of Rs.51,35,557/- and disallowances of various expenses of Rs.1,54,790/-. In the first appeal the Id. CIT(A) confirmed the disallowance of interest of Rs.26,21,505/- and partly confirmed the disallowances of various expenses to the extent of Rs.77,395/-, against which, the assessee is in appeal before the ITAT.

5. We have considered the rival contentions and carefully gone through the orders of the authorities below and found that the assessee was having trade relations with M/s Shree Nath Trading Co and the assessee has been making purchases from the said party of a high magnitude. As per the AO himself, this year alone, the assessee made purchases of Rs.10.48 Crores. In the past also, the assessee has been dealing with the said party in a large

magnitude ranging between Rs.3.5 to 5.90 Crores. It is pertinent to note that the said party has never been charging any interest from the assessee despite the assessee making entire purchase on credit basis only, irrespective of the period involved. As per the prevailing trade practice in the cases of credit purchases, normally 8-10 days credit site/period is allowed within which, if the buyer fails, interest is charged. It is under this background, when this year also huge credit purchases of around Rs.11 Crores (Approx) were made, no interest was charged by the said party. Keeping this treatment in mind and further expecting huge purchases to be made in the immediately next financial year, giving this advance was not abnormal. Notably in immediately next year in April and May, 2013 itself, the assessee made purchases of Rs.2.48 Crores from the said party. The balance also stood adjusted thereafter leaving no debit balance. Moreover, the total amount of Rs.3.06 Crores was not given in one single stroke but on different dates.

6. From the record, we also found that M/s Shri Nath Trading Company is a 50 years old concern and having its own reputation and goodwill in the market. Dealing with such a

party, certainly also supported the present assessee therefore giving of Rs.3.06 Crores without interest was not something abnormal but was a prudent business decision taken out of pure commercial consideration. Thus, the subjected amount so given was fully out of the commercial expediency. Reliance placed on the decision in the case of SA builder Ltd. 288 ITR 1 (SC).

7. From the record, we also found that the assessee was having huge interest free capital. Moreover, to support, copies of the Audited Balance Sheet as on 31.03.2013 were submitted before the AO. A perusal therefore, clearly reveals that there was a huge interest free Capital stood at Rs.1,94,53,845/- as on 31.03.2013 (A.Y.2013-14) and Rs.85,74,854/- as on 31.03.2012 (A.Y.2012-13), the breakup of which was submitted before the AO and also some other interest free funds namely credit balance of Rs.91,07,311/- of M/s Shree Shyam Traders, Newai, totaling to Rs.2,85,61,156/-.

8. The law is well settled that where assessee is having sufficient interest free funds, there will a presumption that the interest free funds have been given out of the same and hence,

no interest can be disallowed. For this purpose, reliance is placed on the following judicial pronouncements:

- (i) ACIT v/s Ram Kishan Verma (2012) 143 TTJ 1 (Jp)
- (ii) CIT v/s Ram Kishan Verma (2016) 132 DTR 107 (Raj.)
- (iii) CIT v/s Radico Khaitan Ltd. (2005) 194 CTR 451/274 ITR 354 (All) (HC)
- (iv) CIT v/s Reliance Utilities & Power Ltd. (2009) 313 ITR 340 (Mum)

9. In view of the above facts and circumstances, we do not find any merit in the disallowance of interest so made by the A.O., accordingly, the A.O. is directed to delete the disallowances of Rs. 26,21,505/-.

10. With regard to disallowance of various expenses, the AO has dealt with the issue at Page-5 of the impugned order and onwards. A perusal of the impugned order reveal that the various disallowances have been made simply on surmises and conjectures. The objections, taken in almost all the cases, are that the vouchers of such expenses on day to day basis were not available, all such expenses were paid mostly in cash and some vouchers were in shape of rough paper (Kachi parchiyan). Hence, he disallowed Rs.1,54,790/- (10% of Rs.15,47,889/-).

11. By the impugned order, the Id. CIT(A) partly confirmed the disallowances of various expenses to the extent of Rs.77,395/-, against which the assessee is in appeal before the ITAT.

12. After going through the details of expenditure, considering their nature and the necessity of business, for which expenditure were incurred, we are inclined to restrict the disallowance to the extent of Rs. 10,000/-. Accordingly, the A.O. is directed to restrict the disallowance on account of various expenses debited in the P&L account to the extent of Rs. 10,000/-.

13. In the result, appeal of the assessee is allowed in part.

Order pronounced in the open court on 15th September, 2020.

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

Sd/-
(रमेश सी शर्मा)
(RAMESH C SHARMA)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 15/09/2020
*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Kedar Prasad Khandelwal, Tonk.
2. प्रत्यर्थी / The Respondent- The D.C.I.T., Circle-7, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 878/JP/2017)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar