

आयकर अपीलिय अधिकरण  
मुंबई पीठ "एस एम सी"  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
आअसं. 3151/मुं/2019 (नि.व.2015-16)  
ITA NO. 3151/MUM/2019 (A.Y.2015-16)

M/s.PME Infratech (P) Ltd.,  
Plot No.51, Near BIDCO and  
Golden Industries Mahim,  
Palghar, Thane 401 404  
PAN: AAACV4958R

: अपीलार्थी/ Appellant

**बनाम/ Vs.**

Asstt. Commissioner of Income-tax,  
Palghar Circle, Aaykar Bhavan,  
BIDCO Road,  
Palghar(West) Palghar – 401 404

: प्रत्यर्थी/ Respondent

**Assessee by** : None  
**Revenue by** : Ms. Kavita P. Kaushik

सुनवाई की तारीख/  
**Date of Hearing** : 16/09/2020  
घोषणा की तारीख /  
**Date of Pronouncement** : 30/09/2020

**आदेश/ ORDER**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-3, Thane (in short 'the CIT(A)') dated 01/02/2019 for the assessment year 2015-2016.

2. The brief facts of the case assessee as emanating from the records are: The assessee is engaged in the business of manufacturing electronic items including computer hardware. In the course of scrutiny assessment proceedings, the Assessing Officer made additions/disallowances on following counts:-

S.No.	Nature of expenditure	Disallowances
1.	Job work charges (testing of meters)	Rs. 8,10,320/-
2.	Disallowance of interest u/s. 36(1)(iii) of the Act	Rs. 80,71,229/-
3.	Vehicle running & maintenance expenses	Rs. 5,70,459/-
4.	Business promotion expenses	Rs. 6,40,911/-
	Total	Rs. 1,01,12,919/-

Aggrieved by the assessment order dated 29/12/2017 passed under section 143 (3) of the Income Tax Act, 1961 (in short 'the Act'), the assessee filed appeal before the CIT(A). The CIT(A) confirmed the additions in full in respect of job work charges and disallowance of interest under section 36(1)(iii) of the Act. However, in respect of other two expenditure i.e. vehicle running and maintenance and business promotion expenditure, the CIT(A) restricted the addition to 50% of the disallowance made. Still aggrieved, the assessee is in appeal before the Tribunal.

3. Ms. Kavita P. Kaushik, representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee.

4. Submission made by Id. Departmental Representative heard and the orders of authorities below examined. The ground No.1 of the appeal is against disallowance of Rs.8,10,320/- in respect of job work charges paid to M/s. Pal Mohan Electronic Pvt. Ltd., a sister concern of the assessee. The expenditure has been purportedly incurred by the assessee on testing of the meters. The authorities below has observed that in fact the assessee was itself doing testing of the meters from its sister concern M/s. Pal Mohan Electronic Pvt. Ltd. and was receiving job work charges for testing of meters. Since the assessee itself was self equipped for testing of the meters, there was no reason for assigning job work of testing meters to M/s. Pal Mohan Electronic Pvt. Ltd. Further, except for single journal entry dated 31/3/2015 no material was furnished by the assessee before the Assessing Officer to substantiate genuineness of the expenditure. No material was placed on record by the assessee either before the CIT(A) or before the Tribunal to controvert the

findings of the Assessing Officer. I find no merit in ground No.1 of the appeal, the same is dismissed, accordingly.

5. In ground No.2 of the appeal, the assessee has assailed disallowance of claim of deduction Rs.80,71,229/- under section 36(1)(iii) of the Act. The Assessing Officer observed that the assessee has made borrowings of Rs.14.21 crores during the period relevant to the assessment year under appeal and has paid interest of Rs.1.57 cores @ 11.05%. The assessee had advanced short term loans of Rs.6.88 crores without charging interest. The short term loans have been advanced from borrowed funds. The assessee has submitted summary of advances before the Assessing Officer, the same is produced as under:-

<b>Name of Parties</b>	<b>Amount (in. Rs.)</b>
Capital Agencies (P) Ltd.	21,85,813.00
Geodesie Limited	1,13,00,000.00
Global Electrical & Electronics	11,50,000.00
ICE Softek Pvt. Ltd.	2,50,00,000.00
J.B.B Enterprises	3,18,063.25
Om Sai Enterprises	44,319.45
Rama Electronics	15,00,000.00
S.S.Enterprise	15,00,000.00
Uni Technology (Hongkong) Co. Ltd	9,34,000.00
UTI Technology (Hongkong) Co. Ltd	2,16,652.12
VDS Plastic Pvt. Ltd.	24,44,954.00
Vision Enterprises	25,00,000.00

The assessee pointed that out of these advances two parties i.e. Om Sai Enterprises and VDS Plastic Pvt. Ltd. have been wrongly shown under the head sundry debtors. The amount is outstanding from the aforesaid parties on account of sale of goods. The rest of the advances are made to suppliers for smooth supply of material. Hence, these are business advances. The Assessing Officer while making the addition has observed that the assessee has diverted borrowed funds for non-business purposes and has debited huge interest expenditure in the P&L Account. The Assessing Officer while holding so has not given his finding on the fact that the list of parties given by the assessee to whom advances have been allegedly made

are not the suppliers of material to the assessee. Further, the Assessing Officer has not named the parties to whom alleged interest free advances are given by the assessee for non business purpose. After examining the facts of the case I am of considered opinion that this issue needs revisit to the file of Assessing Officer. The Assessing Officer is directed to re-examine the issue and pass a speaking order after affording reasonable opportunity of hearing to the assessee, in accordance with law. The Assessing Officer while deciding the issue afresh shall also test the alleged interest free advances on the touchstones of ratio laid down by the Hon'ble Bombay High Court in the case of *CIT vs. Reliance Utilities and Power Limited reported as 313 ITR 340*. The ground No.2 is allowed for statistical purpose.

6. In ground No.3 of the appeal, the assessee has assailed disallowance of vehicle running and maintenance expenses confirmed by the CIT(A). The assessee has claimed vehicle running and maintenance expenses amounting to Rs.5,70,459/-. The Assessing Officer disallowed the entire expenditure on the premise that the assessee has failed to provide copy of registration books of the vehicle, log book, etc. The CIT(A) restricted the disallowance to 50%. The contention of the assessee before lower authorities is that the petrol and vehicle maintenance expenses were incurred for the vehicles of directors and staff of the company at New Delhi. Taking into consideration entire facts on record, personal use of vehicles by the directors and their family cannot be ruled out, hence, after factoring for personal use of vehicles, I deem it appropriate to restrict disallowance to 10% of the total expenditure claimed for petrol and vehicle maintenance. The ground No.3 of appeal is partly allowed, in the terms aforesaid.

7. In ground No.4 of the appeal, the assessee has assailed disallowance of Rs.3,20,455/- sustained by the CIT(A) in respect of business promotion expenses. The assessee has claimed expenditure of Rs.6,40,911/- under the head Business Promotions Expenses. The expenditure has been made on entertainment of customers, gifts, etc. The payment for the expenditure has been made by credit card. The disallowance has been made primarily for the reason that the assessee has failed to furnish copies of bills, vouchers, etc. Considering entire facts of the case, I am of the view that disallowance of 50% is on higher side.

Disallowance to the extent of 10% of the expenditure claimed would meet the ends of justice. The ground No.4 is partly allowed in the terms aforesaid.

8. In the result, appeal of the assessee is partly allowed.

Order pronounced on Wednesday the 30<sup>th</sup> day of September, 2020.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated: /09/2020

Vm, Sr. PS(O/S)

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)

**ITAT, Mumbai**