

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, 'B' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 62/JP/2018  
निर्धारण वर्ष/Assessment Year : 2014-15

|   |             |                              |
|---|-------------|------------------------------|
| Shri Deep Chand Garg,<br>Near Radha Kishan Temple, Gandhi<br>Nagar, Ajmer | बनाम<br>Vs. | The ITO,<br>Ward-2(1), Ajmer |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AFLPG8278C                        |             |                              |
| अपीलार्थी / Appellant   |             | प्रत्यर्थी / Respondent      |

निर्धारिती की ओर से / Assessee by : Sh. Mahendra Gargieya (Adv.) &  
Sh. Devang Gargieya (ITP)  
राजस्व की ओर से / Revenue by : Ms. Chanchal Meena (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 01/10/2020  
उदघोषणा की तारीख / Date of Pronouncement: 07/10/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Ajmer dated 09.11.2018 wherein the assessee has taken following grounds of appeal:-

- "1. The impugned additions and disallowance made in the order u/s 143(3) of the Act dated 19.12.2016 are bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be deleted.*
- 2. The Id. CIT(A) erred in law as well as on the facts of the case in confirming the disallowance of interest Rs. 7,98,401/- in respect of interest free advances given to related concerns. The disallowance so made & confirmed by the Id. CIT(A), is contrary to the provisions of law and facts hence, kindly be deleted in full.*

3. *The Id. AO further erred in law as well as on the facts of the case in charging interest u/s 234A, 234B, 234C & 234D of the Act and as also in withdrawing interest u/s 244A of the Act. The appellant totally denies its liability of charging and withdrawal of any such interest. The interest so charged/withdrawn, being contrary to the provisions of law and facts, kindly be deleted in full."*

2. During the course of hearing, the Id AR submitted that the appellant's interest free advance to relatives are to the tune of Rs. 66,00,347/-, as compared to the previous year of Rs 70,80,336/-. Thus loans and advances to relatives have decreased during the year. The appellant has not charged any interest on the loans and advances as the appellant has sufficient interest free capital and trade creditors for making the interest free advance to the above parties. The Id. A.O. has not established the direct nexus between interest bearing loan taken and interest free loan given.

3. It was submitted that the assessee had capital of Rs 37,62,815/-. Besides this, the assessee had interest free trade creditors(net) of Rs 28,37,532/- as calculated below, on which no interest had been paid:-

|   |                    |
|---|--------------------|
| Total Liabilities as per Balance sheet<br>(excluding capital)                 | 3,95,33,213/-      |
| Total Assets as per balance sheet<br>(excluding advance to family<br>members) | 3,66,95,681/-      |
| Trade Creditors Interest free   | <u>28,37,532/-</u> |

It was submitted that on perusal of above figures, it is clear that the assessee had capital of Rs. 37,62,815/- and interest free trade creditors(net) of Rs. 28,37,532/- totaling to Rs. 66,00,347/- which the assessee has given as interest free advance. As such, advance was made out of assessee's own funds and interest free trade creditors and not from the borrowed funds.

4. It was further submitted that the Id A.O. has mentioned at page 4 point no. 6 of assessment order that the assessee has interest free creditors only of Rs 2,17,31,640/- as against interest free debtors of Rs 3,28,14,935/-. Hence the interest free debtors of Rs 1,10,83,295/- are his own family members. The Id A.O. has not considered the assessee's reply dated 30.11.2016 para 7 wherein it was stated that "accounts of Shree Mahavir Industries, Shri Swastik Pigments and VR Industries are current account in nature. In view of the submission made in para (6) above, your honour is requested not to disallow any part of the interest paid by the assessee". Copy of assessee's letter dated 30.11.2016 is placed at page no. 4-5 of paper book. Even if the balance of current account of related parties of Rs. 1,16,23,549/- is also considered, the position would be as under:-

|   |                      |
|---|----------------------|
| Total Liabilities as per Balance sheet<br>(excluding capital)   | 3,95,33,213/-        |
| Total Assets as per balance sheet<br>(excluding advance to family<br>members and balance of current<br>accounts of related parties) | 2,50,72,132/-        |
| Trade Creditors Interest free   | <u>1,44,61,081/-</u> |

From the above, it may be noted that the assessee had capital of Rs. 37,62,815/- and interest free trade creditors(net) of Rs.1,44,61,081/-

totaling to Rs. 1,82,23,896/- and as such, advance of Rs.66,00,347/- and balance in current account of related concerns of Rs.1,16,23,549/- totalling to Rs 1,82,23,896/- was made out of assessee's own funds and interest free trade creditors and not from the borrowed funds.

5. It was further submitted that where there are mixed funds and the assessee had sufficient interest free funds then it is to be presumed that the payments were made out of the assessee's own funds and not out of borrowed funds. In support, reliance was placed on Kushalbagh Marbles (P) Ltd vs JCIT (ITA No. 104/Jodh/2016) and ACIT vs. Ram Kishan Verma (2012) 143 TTJ 1 (JP).

6. Per contra, the Id. DR taken us through the findings of the AO which reads as under:-

*"The submission of the AR is considered but not accepted for the following reasons.*

*1. The assessee has forwarded advances too to his related concerns of Rs 1,16,23,549/- which are there throughout the year.*

*2) The AR has stated that the assessee could have forwarded the interest free loan to the extent of the capital of Rs 37,62,815/- , there is a big question "Could have". The assessee has not forwarded the same from his capital. Had he forwarded from his capital his capital would have wiped off.*

*3) The Fact further is that the capital has already been invested and therefore the need to borrow from the bank and other parties arose. The assessee has fixed asset and investment of non income paying nature from his capital. Actually the whole of business is being run from the Interest bearing loans.*

4) *The AR has not taken into consideration the advances given to the related concerns. The picture depicts that the related concerns are thriving at the cost of assessee's business, which is not allowable under the Income Tax Act 1961. Only the expenses which are relatable to the business are to be allowed while computing the taxable income of the assessee.*

5) *The AR has stated that the assessee had interest free trade credits from which he could have given the loans interest free. The AR has not taken into consideration that the assessee has interest free trade debtors as well of Rs. 3,28,14,935/- of which the major were his related parties of Rs. 1,16,23,549/-.*

6) *The Interest free creditors are only of Rs. 2,17,31,640/- as against Interest free debtors of Rs. 3,28,14,935/-. Hence the interest free debtors of Rs. 1,10,83,295/- are his own family members.*

*Hence in view of above discussion it is held that the Interest to the extent of the loan and advances which are given interest free to related concerns is disallowed and added to the income of the assessee. The working of the Interest disallowance is as under:-*

| <i>Loans</i>           | <i>Amount</i>        |
|------------------------|----------------------|
| <i>Bank OD account</i> | <i>1,13,72,634/-</i> |
| <i>Secured loans</i>   | <i>11,41,830/-</i>   |
| <i>Unsecured loans</i> | <i>5,25,31,175/-</i> |
| <i>Total</i>           | <i>1,77,67,639/-</i> |

*The assessee is paying interest of Rs. 21,49,236/- on the loans of Rs. 1,77,67,639/- hence the proportionate disallowance of interest works out to Rs. 7,98,401/- which is disallowed and added to the income of the assessee. Penalty Proceedings u/s 271(1)(c) of the Income Tax Act 1961 is initiated for concealment of Income separately."*

7. The Id DR further taken us through the findings of the Id CIT(A) which read as under:

*"6.3 I have gone through the assessment order, grounds of appeal and written submission carefully. It is seen that the appellant had given interest free advances of Rs. 1,82,23,896/- (Rs. 1,16,23,549/- + Rs. 66,00,347/-). The appellant has not furnished any Fund Flow Statement to show that interest free advances have been given out of assessee's own funds or out of interest free funds available with him Neither the appellant has been able to show that the interest free advances were given for business purposes. In view of these facts, the proportionate disallowance of Rs. 7,98,401/- made by the appellant out of the total interest paid of Rs. 21,49,236/- is hereby confirmed."*

The Id DR accordingly supported the findings of the lower authorities.

8. We have heard the rival submissions and perused the material available on record. The contention of the assessee is that he has sufficient interest free capital and trade creditors for making the interest free advance to his relatives. On the other hand, the contention of the Revenue is that the capital even though interest free is not available for giving advance to the relatives as the same stand invested in fixed and other assets. Further, the interest free debtors are more than interest free creditors and thus, the latter are not available for giving advance to the relatives. In our view, what is relevant to determine is the availability of capital at the relevant point of time of making individual advances to the relatives as represented by free cash and bank balance which is available to be utilized. Where at the relevant point in time when the individual advances have been given by the assessee, the latter has free cash and bank balance which the assessee is in a position to deploy/utilize and then finally decide to utilize the same for

making advance to his relatives, it can be said that the advances to relatives have been made out of interest free capital. On the other hand, where the assessee's capital remain invested in fixed and other assets, it cannot be said that the advances to relatives have been made out of interest free capital and a natural corollary of the same is that such advances have been made out of interest bearing loan funds. Similar analogy applies in respect of interest free trade creditors and even in case of mixed funds where again the availability of mixed funds at the relevant point in time needs to be determined. The position as reflected in the balance sheet shows the position at the year end and therefore, doesn't reflect the position of interest free capital and trade creditors or for that matter, the mixed funds which is available with the assessee as free cash and bank balance at the relevant point in time of making the individual advances during the year. In the instant case, where we look at the position of cash and bank balance as on the balance sheet date of 31.03.2014, it shows cash of Rs 8,495 and bank balance of Rs 45,697/- as compared to advances to relatives to the tune of Rs 66,00,347/- and therefore, it stands proved that the position at the balance sheet date is not reflective of the availability of appropriate free funds whether in form of capital, trade creditors, loan funds with the assessee for making such advances. Further, the assessee has contended that interest free advance to relatives during the year are to the tune of Rs. 66,00,347/- as compared to the previous year of Rs 70,80,336/- and therefore, what is equally relevant to determine is the amount which was advanced in the previous year and fresh advances/repayment during the year and availability of free cash and bank balance in the previous year and current year at the relevant point in time of making such advances. In this regard, the findings of the Id CIT(A) becomes relevant where he rightly says that a fund flow statement will reflect such a position of interest free funds which are available to be utilized and which

the assessee has failed to furnish during the appellate proceedings before him. Even during the course of present proceedings, the assessee has not furnished any fund flow statement and therefore, the said findings of the Id CIT(A) remain uncontroverted and we are thus not inclined to interfere with the same and thus, the contentions so advanced by the Id AR cannot be accepted as the same remain unsubstantiated. However, regarding the contention of the Id AR that other advances to related concerns to the tune of Rs 1,16,23,549 are in nature of trade debtors and the matter has not been examined by the AO, the matter is set-aside to the file of the AO with a direction to verify the said claim and where, on verification, it is found that such transactions are in course of the assessee's business, the same is directed to be excluded while working out the disallowance of interest. In the result, the ground no. 2 is disposed off.

9. Ground no. 1 is general in nature, it doesn't require any separate adjudication and is hereby dismissed.

10. Ground no. 3 is regarding levy of interest, the same being consequential in nature, the same is also dismissed.

In the result, the appeal of the assessee is disposed off with above directions.

Order pronounced in the open Court on 07/10/2020.

Sd/-  
( संदीप गोसाई )  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

Sd/-  
(विक्रम सिंह यादव)  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 07/10/2020

\*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Shri Deep Chand Garg, Ajmer
2. प्रत्यर्थी / The Respondent- The ITO, Ward 2(1), Ajmer
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 62/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar