

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 अपील सं./ ITA No. 1249/CHD/2019

निर्धारण वर्ष / Assessment Year : 2014-15

Shri Sanjay Kumar Sharma, Prop of M/s KKPR and Advertisers, 68, New Sarabha Nagar, Pakhawal Road, Ludhiana	बनाम	The DCIT, Circle-6, Ludhiana
स्थायी लेखा सं./PAN NO: BCPPS4875M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Hearing through video Conferencing

निर्धारिती की ओर से/Assessee by : Shri Ashwani Kumar ,CA

राजस्व की ओर से/ Revenue by : Shri Amaresh Singh, CIT

सुनवाई की तारीख/Date of Hearing : 21.10..2020

उदघोषणा की तारीख/Date of Pronouncement : 21.10.2020

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 26.09.2019 of the Commissioner of Income Tax (Appeals)-3, Ludhiana [hereinafter referred to as 'CIT(A)'].

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

1. *The Ld. Commissioner of Income Tax (Appeal)-3,*

Ludhiana has erred in law and on facts of the case :

(a) By arbitrarily and wrongly confirmed the rejection of books of accounts and assessment framed u/s 143(3) r.w.s 144 of the Income Tax Act, 1961.

(b) By arbitrarily and wrongly confirmed the disallowance of Rs.2483432/- towards Bank charges, Processing fees and Bank interest u/s 36(i)(iii) of the Income Tax Act, 1961.

2. *The above said order is bad in law & contrary to the facts of case.*
3. *It is therefore prayed that the appeal may please be accepted and such relief may kindly be allowed which may be deemed fit and proper under the facts and circumstances of the case.*
4. *The assessee craves permission to file/raise/amend any ground of appeal before or at the time of hearing.*

3. The sole issue raised by the assessee through the above grounds of appeals is relating to the disallowance made by the lower authorities u/s 36(i)(iii) of the Income Tax Act, 1961 (in short 'the Act') out of interest expenditure in respect of interest free advances / payments made by the assessee to different parties. The Assessing Officer during the assessment proceedings made the disallowance of following expenses:-

a.	Bank Charges	Rs.809877/-
b.	Bank Interest	Rs. 1578525/-
c.	Processing Fee	Rs.95030/-
	Total	Rs.2483432/-

The Assessing Officer observed that the assessee had made interest free advances to the following parties which were not for the business purposes of the assessee:-

a.	Sh. Ashutosh Projections	Rs.30,00,000 -
b.	M/s Ganga Acrowools Ltd	Rs. 1060987/-
c.	M/s Group K. Technologies (p) ltd	Rs.16,50,374'-
	Total	Rs. 5711361/-

He, therefore, made the impugned disallowance u/s 36(i)(iii) of the Act out of the interest expenditure claimed by the assessee.

4. Before the Ld.CIT(A), the Ld. Counsel for the assessee has explained the business needs for making the interest free advances as under:-

I. M/s Ashutosh (Projections):- *The advance of Rs. 30,00,000/- was given to the said party during this year for purchase of office. However, the deal could not mature and the said advance was received back by April-May, 2015, Copy of account of the said party for the year ending 31.03.2014 to 31.03.2016 is enclosed for ready reference. Since the advance was given for business purpose under commercial expediency only, no disallowance of expenses is called for w.r.t the impugned advance of Rs.30,00,000/-.*

II. M/s Ganga Acrowools Ltd:- *The assessee company had sold goods to the said company vide bill No.2182 dtd.30.11.2013 for Rs.10,60,987/-. The bill amount was received in the next year. Copy of account of the said company for this year and next year along with copy of sale bill are enclosed for your honour's perusal.*

However, due to mistake, instead of classifying the said amount as a sundry debtor, it was shown in the list of loans and advances. Accordingly, no disallowance of expenses is called for w.r.t to the said amount of Rs.1060987/-.

III. Group K. Technologies (P) Ltd:- *The assessee had paid sum total of Rs. 4107823/-, during this year on behalf of the said company, out of which the balance as on 31.03.2014 remained at Rs.1650374/-. Copy of A/c of the said concern is already enclosed hereinbefore. This concern is a sister/associate concern of the assessee. The payments of expenses were made on behalf of the said group company for business considerations under commercial expediency due to which no disallowance is called for.”*

It was also submitted before the Ld. CIT(A) that at the most disallowance can be made in respect of the notional interest on the aforesaid interest free advances, however, no disallowance of bank charges and processing fee was warranted in this case. It was also submitted that even otherwise the own funds of the assessee were sufficient to meet interest free advances made by the assessee. However, the Ld. CIT(A) observed that the advances were made out of the mixed funds and the possibility was that interest bearing funds were used for making the advances. He, therefore, confirmed the disallowance so made by the Assessing Officer.

5. Being aggrieved by the above order of the CIT(A), the assessee has come in appeal before us.

6. We have heard the rival contentions of the Ld. Authorized

Representatives of both the parties. We find that the Ld. CIT(A) has not given any adverse findings in respect of the submissions of the assessee that the advances made to the aforesaid three parties were out of the business expediency. Even it was explained that the amount outstanding to M/s Ganga Acrowools Ltd. was in respect of the goods sold to that party. Further, no justification has been given as to how disallowance of bank charges and processing fee was warranted in this case. There is no denial to the contention of the assessee that the assessee had own funds in the shape of own capital and unsecured loans to the tune of Rs. 124.73 lacs and Rs. 53.35 lacs respectively totaling Rs. 178.08 lacs, which amount was sufficient to meet the advances made by the assessee.

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 holding 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 decision of the Hon'ble Supreme Court in the case of 'CIT (LTU) Vs.

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Reliance Industries Ltd.’ [2019] 410 ITR 466 (SC). Thus, as per the settled law no disallowance u/s 36(i)(iii) of the Act is warranted on this issue. The disallowance made by the AO on this issue is ordered to be deleted. The issue is accordingly allowed in favour of the assessee.

In view of this, we do not find any merit in the order of the CIT(A) and the same is hereby set aside.

The appeal of the assessee is hereby allowed.

Order pronounced on 21.10.2020.

Sd/-

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

Sd/-

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

Dated : 21.10.2020

“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, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar