

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH, "SMC", CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 884/CHD/2018

निर्धारण वर्ष / Assessment Year : 2009-10

M/s International Customer Related Management Service Pvt. Ltd., Phase 3A, Mohali	बनाम	The DCIT, Circle 6 (1), Mohali
स्थायी लेखा सं./PAN NO: AABCI2162B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Hearing though video Conferencing

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate
राजस्व की ओर से/ Revenue by : Smt. Meenakshi Vohra, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 11.11.2020
उदघोषणा की तारीख/Date of Pronouncement : 09.12.2020

आदेश/Order

The present appeal has been preferred by the assessee against the order dated 28.3.2018 of the Commissioner of Income Tax (Appeals)-2 Chandigarh [hereinafter referred to as 'CIT(A)'].

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

1. *That worthy CIT(A)'order is contrary to law and facts of the case.*
2. *The worthy CIT(A) erred in upholding the disallowance u/s 36(1)(iii) of the Act amounting to Rs. 11,25,132/- made by the Ld. Assessing Officer.*

3. *The worthy CIT(A) erred in upholding the disallowance made by the Ld. Assessing Officer with respect to land development expenditure amounting to Rs. 2,77,207/-.*

3. **Ground No. 1** : Ground No.1 is general in nature and does not requires any specific adjudication.

4. **Ground No.2** : vide ground No.2 the assessee has agitated the confirmation of disallowance of Rs. 11,25,132/- made by the Assessing Officer u/s 36(1)(iii) of the Income Tax Act, 1961 (in short 'the Act').

5. At the outset, Ld. Counsel for the assessee has submitted that the impugned disallowance has been made by the Assessing Officer out of interest expenditure on account of investment / interest free advances given by the assessee holding that the same were given out of the interest bearing funds. However, it was pleaded before the Ld. CIT(A) that investment made / interest free advances were given by the assessee out of own surplus funds / interest free funds available with the assessee. However, the Ld. CIT(A) decided the issue against the assessee holding that the advances / investment was not made for business purposes of the assessee. The Ld. Counsel for the assessee has further submitted that the issue is now squarely covered by the decision of the Hon'ble Supreme Court in the case of 'Hero Cycles (P) Ltd Vs. CIT' 379 ITR 347 (SC) and also by the decision of the Hon'ble Supreme Court in the case of 'CIT (LTU) Vs.

Reliance Industries Ltd.’ [2019] 410 ITR 466 (SC).

6. I have considered the rival contentions of the Ld. Representatives of the parties and 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. Reliance Industries Ltd.’ [2019] 410 ITR 466 (SC).

7. However, the factual aspect as to whether the assessee was possessed of sufficient own funds or not, to meet the advances / investment made is required to be examined at the hands of the Assessing Officer. In view of this, the matter is restored to the file of the Assessing Officer to examine as to whether the assessee was possessed of sufficient own / interest free funds to meet the investment and to decide the issue afresh in light of the observations made above.

7. **Ground No.3:** Vide ground No.3 the assessee has agitated the confirmation of disallowance made by the Assessing Officer with respect of land development expenditure amounting to Rs. 2,77,207/- The Assessing Officer made the impugned disallowance on the ground that the assessee could not furnish sufficient evidence to prove the incurring of the aforesaid expenditure. However, before the Ld. CIT(A) the necessary evidences were furnished and it was pleaded that in fact the Assessing Officer has not called for such evidences from the assessee. The Ld. CIT(A), however, did not consider the evidence produced by the assessee observing that the assessee has not moved a separate application u/s 46A of the Act for admission of additional evidence.

8. After considering the rival submissions of the parties, I am of the view that the evidences sought to be relied upon by the assessee go to the root of the case and are required to be looked into before making any disallowance in this respect.

In view of this, the impugned order of the CIT(A) on this issue is also set aside and the matter is restored to the file of the Assessing Officer on this issue also with a direction to admit the additional evidence in respect of the aforesaid issue and decide the issue afresh in accordance with law after giving assessee a proper and reasonable opportunity of hearing.

In the result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced on 09.12.2020.

Sd/-

(संजय गर्ग / SANJAY GARG)

न्यायिक सदस्य/ Judicial Member

Dated : 09.12.2020

“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