

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. 122/JP/2019  
निर्धारण वर्ष/Assessment Year : 2014-15

M/s. Goodwill Auto Agencies, S-3, Janta Colony, Jaipur.	बनाम Vs.	The ACIT Circle-5, Income Tax Department, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AABFG 4705 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Vinod Gupta (CA) &  
Shri Deepak Sharma (CA)  
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 08/02/2021  
घोषणा की तारीख / Date of Pronouncement : 30/04/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-2, Jaipur dated 20.11.2018 relevant to assessment year 2014-15 wherein the assessee has raised the following grounds of appeal:-

"1. Impugned assessment order passed u/s 143(3) is bad in law and on facts being against the principal of natural justice, perverse and for many statutory reasons.

2. Under the facts and circumstances, Ld. AO has erred by disallowing the interest Rs. 8,37,142/- calculated @ 15% on interest free advances and CIT(A) has erred by sustaining the same. The disallowance made and confirmed is unjustified, illegal or excessive."

2. At the outset, it is noted that the appeal of the assessee was dismissed by the Coordinate Bench vide its consolidated order dated 13.03.2020 in ITA No. 121 & 122/JP/2019 for the assessment years 2013-14 & 2014-15 respectively. Subsequently, the assessee moved a misc. application and the Coordinate Bench vide its order dated 22.12.2020 has recalled the earlier order for the impugned assessment year 2014-15 for the purposes of fresh hearing and accordingly, the appeal has come up for adjudication before us.

3. During the course of hearing, the Id. AR of the assessee has not pressed the ground No. 1 for which the DR. has raised no objection. Hence, the same is dismissed as not pressed.

4. Regarding ground No. 2, briefly the facts of the case are that during the course of assessment proceedings, the Assessing officer observed that the assessee has given interest free loan to some parties during the year to the tune of Rs. 55,80,948/- and the assessee was asked to justify as to why the loans extended to these parties on which interest has not been charged should not be considered as a diversion of business funds and interest should not be disallowed to that extent. In response, the assessee filed its submission which was considered but not found acceptable to the Assessing Officer. It was held by the Assessing Officer that interest free loans are just a diversion of funds and interest @ 15% on the loan amount of Rs. 55,80,948/- was computed and disallowance of Rs. 8,37,142/- was made in the hands of the assessee.

5. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A). It was submitted before the Id CIT(A) that during the financial year 2013-14, no fresh interest free funds have been advanced by the assessee and the advances of Rs. 55,80,948/- were brought forward from the previous

years. It was further submitted that interest free funds available with the assessee in form of capital was far greater than interest free funds granted in the earlier years and therefore, the disallowance so made by the Assessing Officer should be deleted. The submissions so made by the assessee was again considered but not found acceptable to the Id CIT(A) and the disallowance made by the Assessing Officer was confirmed. It was held by the Id CIT(A) that where the assessee was having interest free capital of Rs 3.19 crores, why it had paid interest of more than Rs 1.12 crores. Further, the assessee has not filed full balance sheet for examination of application of borrowed funds and thus, the findings of the AO were confirmed. Against the said findings, the assessee is in appeal before us.

6. During the course of hearing, the Id. AR drawn our reference to the year-end balances of interest free loans given to various parties as on closing of the financial years 2011-12, 2012-13 & 2013-14 respectively and the parties-wise details of loans and advances as on 1.4.2013 and 31.03.2014. It was submitted that a perusal of the above details make it clear that total of opening balances of "loan and advances" was Rs 38,15,680/- as on 1.4.2013 which is same as closing balance as on 31.3.2012 which shows these balances have been carried forward from previous years and during the year under consideration, one ledger account namely "M/s Goodwill Agencies", which was in the nature of business account but due to long outstanding, it was reclassified under the head "loans and advances" and due to this, the amount of "loans and advances" got increased. In effect, no fresh loans were given during the year under consideration and infact, the assessee received a repayment amount of Rs.16,46,253/- during the year under consideration. It was further submitted that in assessee's own case for AY 2013-14 in ITA No. 121/JP/2019 vide order dated 13.03.2020, the Coordinate Bench has categorically recorded a finding that interest free advances to various parties

has been brought forward from earlier years and considering these facts, disallowance of interest was deleted. It was accordingly submitted that there are no changes in facts and circumstances in the instant case and considering the decision taken by Coordinate Bench in AY 2013-14 in ITA No. 121/JP/2019, the disallowance of interest made in respect of brought forward balances of loans and advances may kindly be deleted in full.

7. Per contra, the Id. DR has relied on the findings of the lower authorities which we have already taken note of and not being repeated for sake of brevity.

8. We have heard the rival contentions and perused the material available on record. The Coordinate Bench in assessee's own case for A.Y 2013-14 has held as under:

*"6. We have considered the rival submissions as well as the relevant material on record. For the assessment year 2013-14, the amount of Rs. 38,15,680/- shown as interest free advance to various parties is the balance brought forward from the earlier year and, therefore, no fresh interest free advances were given during the year under consideration. We further note that the assessee has not paid the interest on the partner's capital upto the assessment year 2013-14 and, therefore, the balance in the partner's capital account would be treated as non interest bearing funds of the assessee firm. Though the Id. A/R of the assessee has contended that the profit of the assessee partnership firm for the year under consideration is more than the advances in question, however, the profit of the partnership firm cannot be considered as the funds of the partnership firm as it has to be distributed among the partners as per their ratio of sharing the profit. However, since the*

*profit has to be added to the capital account of the partners and if it is not withdrawn by the partners, then it will be considered as non interest bearing funds available with the partnership firm in the shape of partner's capital account. Considering this undisputed fact that as on 31<sup>st</sup> March, 2013 the partner's capital account was having a balance of Rs. 2,83,23,484/- which is more than sufficient for giving the advances of Rs. 38,15,680/-. Even the balance in the partner's capital as on 31<sup>st</sup> March, 2012 was more than Rs. 2.61 crores. Therefore, when the non interest bearing funds of the assessee partnership firm is sufficient for giving advances in question, then no disallowance of interest is called for. Accordingly the disallowance made by the AO of Rs. 5,72,352/- for the assessment year 2013-14 is deleted."*

9. For the assessment year 2013-14, the Coordinate Bench has recorded a finding of fact that the amount of Rs. 38,15,680/- shown as interest free advance to various parties is the balance brought forward from the earlier year and, therefore, no fresh interest free advances were given during the year under consideration. It has also recorded a finding that the assessee has not paid the interest on the partner's capital upto the assessment year 2013-14 and, therefore, the balance in the partner's capital account would be treated as non interest bearing funds of the assessee firm and where such balances in the partners capital account amounting to Rs 2,83,23,484/- is more than sufficient for giving advances of Rs 38,15,680/-, no disallowance of interest is called for. For the assessment year 2014-15, we find that there are no fresh transactions of any loans and advances given during the year under consideration and all the loans and advances have been carried forward from

A.Y 2013-14 as apparent from the following details on record:

**Loans & Advances (Asset)**

Group Summary

1-Apr-2013 to 31-Mar-2014

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	Opening Balance	Nett	Closing Balance
		Transactions	
<b>Loans</b>	<b>38,15,680.78 Dr</b>	<b>3,00,000.00 Cr</b>	<b>35,15,680.78 Dr</b>
AGARWAL MOTOR'S JP	9,29,593.00 Dr		9,29,593.00 Dr
ARVIND KUMAR BAJORIA JPR	9,012.00 Dr		9,012.00 Dr
BOMBAY SALES AGENCIES JP	3,00,000.00 Dr	3,00,000.00 Cr	
GOODWILL MOTOR'S (LOAN& AD)	16,65,368.28 Dr		16,65,368.28 Dr
Jitendra Khandelwal	42,345.00 Dr		42,345.00 Dr
Madhu Dhamnia Jaipur	23,014.00 Dr		23,014.00 Dr
PUSHKAR JI SANGHAI	15,308.00 Dr		15,308.00 Dr
Sanjeev Agarwal			
SANWARMAL AGARWAL	8,08,026.50 Dr		8,08,026.50 Dr
Shweta Dhamnia Jaipur	23,014.00 Dr		23,014.00 Dr
SURAJ MINING GRANITE PVT LTD.			
GOODWILL AGENCIES (CURRENT ACCOUNT)	34,11,520.36 Dr	13,46,253.00 Cr	20,65,267.36 Dr
<b>Grand Total</b>	<b>72,27,201.14 Dr</b>	<b>16,46,253.00 Cr</b>	<b>55,80,948.14 Dr</b>

10. We find that as on 31.03.2014, the total balances in the loans and advances stood at Rs 55,80,948/- which consist of opening balance of Rs 38,15,680, reclassification of current account of Rs 34,11,520/- and taking into consideration the repayment of Rs 16,46,253/-. There is thus no fresh transaction of loan and advances during the year under consideration and therefore, what is relevant is the source of such loans and advances in the previous years. The Coordinate Bench for A.Y 2013-14 has already recorded a finding that non-interest bearing partner's capital account was sufficient for giving such interest free funds by way of loans and advances and therefore, following the same, where there are no fresh transactions during the year and in the earlier years, interest free partner's capital account has been utilized for making such advances which are carried forward during the year, the disallowance of interest is hereby directed to be deleted.

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

Order pronounced in the open Court on 30/04/2021.

Sd/-

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

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 30/04/2021

Santosh

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

1. अपीलार्थी / The Appellant-M/s Goodwill Auto Agencies, Jaipur.
2. प्रत्यर्थी / The Respondent-The ACIT, Circle-5, Income Tax Department, Jaipur.
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. 122/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar