

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “SMC” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER AND  
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.1229/Ahd/2018  
Assessment Year: 2013-14**

Pharcos Speciality Limited, vs. The Income Tax Officer,  
Plot No.248-250, 278-281, Patan, Ward – 5, Mehsana.  
GIDC, Ranasan,  
Tal. Vijapur,  
Mehsana – 382 855.  
[PAN – AACFG 6278 J]

**ITA No.1230/Ahd/2018  
Assessment Year: 2014-15**

Pharcos Speciality Limited, vs. Asstt. Commissioner of Income Tax  
Plot No.248-250, 278-281, Circle Patan.  
GIDC, Ranasan,  
Tal. Vijapur,  
Mehsana – 382 855.  
[PAN – AACFG 6278 J]

**ITA No.622/Ahd/2019  
Assessment Year: 2015-16**

Pharcos Speciality Limited, vs. Dy. Commissioner of Income Tax  
Plot No.248-250, 278-281, Patan Circle, Patan.  
GIDC, Ranasan,  
Tal. Vijapur,  
Mehsana – 382 855.  
[PAN – AACFG 6278 J]  
(Appellant) (Respondents)

Appellant by : Shri Parimalsinh B. Parmar, A.R.  
Respondents by : Shri S.S. Shukla, Sr. D.R.

Date of hearing : 08.04.2022  
Date of pronouncement : 24.06.2022

**ORDER**

**PER SUCHITRA KAMBLE, JUDICIAL MEMBER :**

These three appeals have been filed by the assessee against three different orders dated 05.02.2018, 05.02.2018 & 31.01.2019 passed by the CIT(A), Gandhinagar, Ahmedabad & CIT(A)-13, Ahmedabad for the Assessment Years 2013-14, 2014-15 & 2015-16 respectively.

2. As identical grounds have been raised in all these three appeals, grounds raised in **ITA No.1229/Ahd/2018 for A.Y. 2013-14** are reproduced as under :-

- "1. The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of the AO of making a disallowance u/s.40A(2) of the Act of interest of Rs.3,49,477/- as being excessive and unreasonable.*
- 2. The learned CIT(A) has erred both in law and on the facts of the case in not appreciating that the lender does not fall under the provisions of Section 40A(2)(b) of the Act.*
- 3. Alternatively and without prejudice, the learned CIT(A) has erred both in law and on the facts of the case in confirming addition u/s.40A(2) of the Act made by the AO without determining the fair market rate of interest.*
- 4. The learned CIT(A) has erred both in law and on the facts of the case in confirming the disallowance of travelling, vehicle and conveyance expenses of Rs.50,000/-.*
- 5. Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*
- 6. The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in levying interest u/s. 234A/B/C of the Act."*

3. The assessee has also raised revised grounds of appeal in all these Assessment Years. Revised grounds raised in **ITA No.1229/Ahd/2018 for A.Y. 2013-14** are reproduced as under :-

- "1. The learned CIT(A) has erred in confirming addition of Rs.3,49,477/- made by the AO under section 37 of the Act in respect of interest expenses.*

2. *The learned CIT(A) has erred in confirming ad hoc addition of Rs.50,000/- out of travelling, vehicle and conveyance expenses.*
3. *Both the lower authorities have passed the orders without properly appreciating the fact and that they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed. .*
4. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the learned AO in levying interest u/s 234A/B/C of the Act.*
4. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the learned AO in initiating penalty u/s.271(1)(c) of the Act.”*

4. The assessee derives income from manufacturing and dealing in Chemicals and trading of Grey Cloths. Return of income was e-filed on 30.09.2013 declaring total income at Rs.9,80,730/-. The assessee is a partnership firm. In the A.Y. under consideration the Assessing Officer made following disallowance/additions :

- (a) Disallowance of interest expenses of Rs.3,49,477/- paid to depositor in excess of 18%.
- (b) Addition on account of short booking of interest income of Rs.8,842/-
- (c) Ad-hoc disallowance of expenses of Rs.50,000/-.

5. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

6. The Ld. AR was asked about the change in the name of the assessee Company from Gujarat Surfactants to the revised Form No.36 wherein the Company name is mentioned as Pharcos Speciality Limited. The Ld. AR has given details and we are satisfied that the appeal is maintainable and there is no defect in the name of the company while filing the appeal.

7. As regards ground no.1 of the appeal relating to addition of Rs.3,49,477/- made by the Assessing Officer under Section 37 of the Income Tax Act, 1961 in respect of interest expenses, the Ld. AR submitted that during the year under consideration the

assessee firm enjoyed various loan facilities viz. Term Loan, Cash Credit, PCFC and Hire purchase from different banks as well as unsecured loan facilities from various private institutions and others. The rate of interest charged on such loans were different considering the nature of facility enjoyed, securities provided, tenure allowed and risk involved by the assessee firm. The assessee firm paid total interest of Rs.71,88,467/- out of which interest of Rs.17,51,519/- was paid against unsecured loans taken from different parties. The Ld. AR further submitted that the list of parties to whom the assessee firm paid interest of Rs.17,51,519/- which was before the Assessing Officer as well as before the CIT(A). Ld. AR submitted that copies of confirmation of these accounts of the said parties were also submitted during the assessment proceedings. The Ld. AR submitted that the assessee has also given the details of interest payment in excess of 18% in respect of Naimish Jayantilal Choksi as the assessee firm paid interest to the said parties as the said party was engaged in the business of finance and was not covered under Section 40A(2)(b) of the Act. The Ld. AR submitted that the assessee firm has taken loan from such party to cater from short and urgent gap of cash flow and working capital requirements for its day today business activities. These loans are not secured finances and involve lot of risk and therefore the rate of interest was higher than the rate in the market. Ld. AR submitted that the loan advanced by such financier is unsecured in nature and hence before advancing any loan, they are evaluating the credit risk, capacity, character, creditworthiness and market reputation of the borrower. Ld. AR relied upon the decision of the Ahmedabad Tribunal in the case of Umesh Krishnani vs. ITO, ITA No.439/Ahd/2007 and DCIT vs. J.H. Finvest (P.) Ltd. (2010) 2 ITR (Trib.) 620 (Del). Ld. AR further submitted that the assessee firm duly deducted the TDS on such interest payment claimed for the A.Y. 2013-14 and paid the taxes to the Government within the prescribed period.

8. The Ld. DR submitted that before the Assessing Officer the assessee failed to give the entire expenditure related to the interest expenses and could not be able to demonstrate the interest rate determined at 18% to 36% is on the higher side. The Assessing Officer has rightly made the addition and the CIT(A) has, after seeing the documents/evidences produced before the authorities, confirmed the same.

9. We have heard both the parties and perused the relevant materials available on record. The assessee is admitting that the interest expenses were higher than the normal interest rate available in the market. The requirement of the funds for urgency of the business can be the criteria to raise the interest rate i.e. 36%. At the time of submission the assessee submitted that the assessee has given the details of interest payment in excess of 18% in respect of Naimish Jayantilal Choksi and it is undisputed fact that the assessee firm paid the said interest to the said party. It was never disputed by the Revenue that the said loan facility was availed by the assessee for business purpose only. The day-to-day business activity requires cash flow regularly and to fill up the gap of cash flow and working capital requirement the assessee has taken the urgent loan. The loan advanced by the said financier/party is unsecured in nature and before advancing the said loan the said party has evaluated the credit risk, capacity, character, creditworthiness and market reputation of the assessee i.e. borrower. The Assessing Officer as well as the CIT(A) though admitted that this loan was taken for business purpose, the CIT(A) has restricted the interest expenditure to 18% and not that of actual 36%. The CIT(A) has not taken cognisance of the exigencies of business and cash flow required for the business purpose by the assessee. Therefore, the CIT(A) was not right in holding that payment of interest at 18% is reasonable. Ground no.1 of the assessee's appeal is allowed.

10. As regards ground no.2 relating to ad-hoc addition of Rs.50,000/- out of travelling, vehicle and conveyance expenses, the Id. AR submitted that there is no element of personal expenses involved in the same and all the evidences were before the Assessing Officer at the time of assessment proceedings.

11. The Ld. DR relied upon the assessment order and the order of the CIT(A).

12. We have heard both the parties and perused all the relevant material available on record. From the perusal of the records it can be seen that the ad-hoc expenses as stated by the Assessing Officer were actually incurred during the business of the assessee firm and there was no personal expenses involved in the same. Thus, the Assessing Officer was not right in making the addition on ad-hoc basis and has totally ignored the evidences put up by the assessee before the Revenue authorities. The CIT(A) has simply confirmed addition and ignored the evidences filed before the Assessing Officer. Therefore, ground no.2 is allowed.

13. As regards ground no.3 is concerned, the same is general in nature and hence dismissed.
14. As regards ground nos.4 & 5, the same are consequential and are not adjudicated at this juncture. Therefore, ITA No.1229/Ahd/2018 for A.Y. 2013-14 filed by the assessee is partly allowed.
15. As regards ITA No.1230/Ahd/2018 for A.Y. 2014-15, grounds are identical to that of A.Y. 2013-14 and hence the same is also partly allowed.
16. As regards ITA No.622/Ahd/2019 for A.Y. 2015-16, the Id. AR has not pressed ground no.1 and hence the same is dismissed.
17. As regards to ground no.2, the same is identical to ground no.1 of A.Y. 2013-14 & 2014-15. Hence the same is dismissed.
18. As regards to ground no.3 relating to disallowance of Rs.50,000/- under Section 40(a)(ia) of the Act, the Ld. AR submitted that Rs.15,000/- (i.e. 30% of Rs.50,000/-) as required under Section 40(a)(ia) of the Act is already disallowed in the computation of income filed for the subject A.Y. for non-deduction of TDS on professional fees having paid to M/s. SNK & Co. and the same is not correct as the assessee has given all the details and the filing of TDS was after the due date as observed by the Revenue authorities.
19. The Ld DR relied upon the assessment order and the order of the CIT(A).
20. We have heard both the parties. From the ledger account along with copy of invoice which was submitted before the authorities, the Assessing Officer as well as the CIT(A) has not taken proper cognisance of the same. In fact, Form No.3CD has given the details of the TDS and, therefore, this addition does not sustain. Therefore, ground no.3 for A.Y. 2015-16 is allowed.
21. As regards ground no.4, the same is general in nature and hence dismissed.
22. As regards to ground no.5 & 6, the same are consequential and hence not adjudicated.

23. Thus, ITA No.622/Ahd/2019 is partly allowed.

24. In the result, all the 3 appeals filed by the assessee are partly allowed.

Order pronounced in the open Court on this 24<sup>th</sup> day of June, 2022.

*Sd/-*  
**(ANNAPURNA GUPTA)**  
Accountant Member

*Sd/-*  
**(SUCHITRA KAMBLE)**  
Judicial Member

**Ahmedabad, the 24<sup>th</sup> day of June, 2022**

***PBN/\****

*Copies to:* (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Ahmedabad benches, Ahmedabad*