

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, 'B': NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.8053/DEL/2019  
[Assessment Year: 2016-17]**

M/s Global Autotech Ltd. 83, LGF World Trade Centre, Barakhamba Road, New Delhi-110001	Vs	Asst. CIT, Circle-10(1), New Delhi
<b>PAN-AACCG0911B</b>		
Assessee		Revenue

Assessee by	Sh. Salil Aggarwal, SR. Adv. Sh. Madhur Aggarwal, Adv. Sh. Shailesh Gupta, CA
Revenue by	Sh. S.L. Anuragi, Sr. DR

<b>Date of Hearing</b>	<b>14.07.2022</b>
<b>Date of Pronouncement</b>	<b>08.08.2022</b>

**ORDER**

**PER SHAMIM YAHYA, AM,**

This appeal by the assessee is directed against the order of the Ld. CIT(A)-4, New Delhi, dated 16.07.2019 pertaining to Assessment Year 2016-17.

2. The grounds of appeal reads as under:-

*1. That the learned Commissioner of Income Tax (Appeals) has grossly erred in law and on facts in sustaining a disallowance of a sum of Rs. 1, 53, 74, 002/- under section 36(1)(iii) of the Act, which disallowance is based on misconceived application of the provisions of law.*

1.1. *That in doing so, the learned Commissioner of Income Tax (Appeals) has failed to appreciate the fact that said disallowance has been worked out with regards to interest free advances given to M/s Autotech Ancilliaries Ltd. (sister concern of assessee) of a sum of Rs. 13 crores in preceding assessment years, and no fresh advance was given during the impugned assessment year and as such, there was no occasion to disallow any sum under section 36(1)(iii) of the Act, with regards to the money advanced in previous assessment years.*

1.2. *That the learned Commissioner of Income Tax (Appeals) has further failed to appreciate the fact the money was advanced by assessee in preceding assessment years and that too out of own surplus funds, furthermore, the interest so claimed by assessee in its books of accounts had direct nexus with the business of assessee and same had been incurred during the normal carrying on of business and no interest bearing fund was diverted in giving interest free loans by assessee nor any nexus has been established or proved by the lower authorities. The addition need be deleted on this ground also.*

1.3. *That the adverse findings recorded by the learned AO and Commissioner of Income Tax (Appeals) are perverse and have been recorded with preconceived notions and without considering the submissions/evidences/material produced on record and also without providing fair and proper opportunity of being heard, hence such findings are vitiated and deserves to be deleted.*

3. Brief facts of the case are that the assessee company advanced a sum of Rs. 13 Crores as interest free loan to its subsidiary M/s Autotech Ancilliaries Ltd. in FY 2012-13. The AO noticed that the assessee company has claimed interest expenses to the tune of Rs. 9,12,78,438/-. It was observed by the AO that the assessee company has diverted interest bearing funds as interest free loans to M/s Autotech Ancilliaries Ltd. The AO sought details and the purpose of giving such loan to the subsidiary. In reply, the assessee submitted that the loan was granted for purchase of land at Bawal, but because of some legal formalities the possession of such land was not received. The reply of the assessee was

considered but not found tenable by the AO. The Assessing Officer asked vide order sheet noting dated 28.11.2018 to provide status of land as on today, copy of land deed etc. however, the assessee could not provide any documentary evidence with regard to purchase of land. Therefore, the Assessing Officer held that business purpose of this interest free loan cannot be established. Further, the assessee has pleaded that the advance was given from the accruals of the company. However, the Assessing Officer noted that the assessee has not filed any evidence to prove this. The assessee was asked vide order sheet noting dated 06.12.2018 to provide copy of bank book to ascertain the status of funds available with the assessee company at the time of giving interest free loan to M/s Autotech Anciliaries Ltd. however, the assessee failed to produce the same. The Assessing Officer opined that the funds given to associate concerns as interest free loans could have been used for returning the loans taken by the assessee on interest. The Assessing Officer further opined that as mentioned earlier, in any business the interest bearing funds and the interest free funds get submerged in a common pool which is used for all the purposes including for giving interest free loans, as in the present case. That the assessee was given an opportunity to explain its position in this regard and the onus lied on it to prove that only interest free funds were used for this purpose. That also the onus lied on the assessee to prove that interest free advances were given for business purpose which he failed to prove despite being asked vide order sheet noting dated 06.12.2018. That the assessee has failed to discharge his onus. That the onus is on the assessee to prove that the

advance was given from the internal accruals of the company. The AO after considering the reply of the assessee made the disallowance of Rs.1,53,74,002/- under section 36(1)(iii) of the Act.

4. Against the above order, the assessee appealed before the Ld. CIT(A). The Ld. CIT(A) noted that the assessee's submission that the sum was granted to sister concern was not granted in the said year and was granted earlier years and hence no disallowance interest could be made for the present year. The assessee placed on record assessment order for the Assessment Year 2013-14 to substantiate that no addition on this count was made earlier year. However, the Ld. CIT(A) was not convinced.

5. The another plea of the assessee was that the advance has been granted for business purpose. For this proposition, he relied upon the case of SA Builders Ltd. vs CIT, was quoted for absence of evidence in this regard. This ground was also rejected by the Ld. CIT(A).

6. Another plea taken by the assessee was that a sums were advanced out of own funds but this was rejected by the Ld. CIT(A) on the ground that the Assessing Officer had asked for such information of that particular year, which was not provided. Accordingly, the Ld. CIT(A) upheld the disallowance.

7. Against this order, the assessee is in appeal before us.

8. We have heard both the parties and perused the records. The Ld. Counsel for the assessee submitted that advance was given to the sister concern long time ago out of own funds and no disallowance was ever made. This year without citing any cogent reason, the disallowance

has been made. The Id. counsel for the assessee referred to the decision of the Hon'ble Karnataka High Court in the case of CIT vs Sridev Enterprises reported in 192 ITR 165(Karn.). In the said decision, the Hon'ble High Court has held that Revenue cannot take different stands in different years. It was expounded that consistency and definiteness of approach by the Revenue is necessary in the matter of recognizing the nature of account maintained by the assessee so that the basis of concluding assessment would not be ignored without actually reopening the assessment. The Hon'ble High Court while concluding has held as under:-

*“Held, that the amount due from N on the first day of the accounting year was the amount that stood outstanding on the last day of the previous accounting year and, therefore, its nature and status could not be different from its nature and status as on the last day of the previous year. Regarding past years, the assessee’s claims for deduction were allowed in respect of the sums advanced during those years. This could be only on the assumption that those advances were not out of borrowed funds of the assessee. This finding during the previous years was the very basis of the deductions permitted during the past years. It would not be equitable to permit the Revenue to take a different stand now in respect of the amounts which were the subject matter of previous year’s assessments.”*

9. The Id. Counsel for the assessee further referred to the decision of the Hon'ble Delhi High Court in the case of CIT vs Givo Ltd. vide order dated 27.07.2010. Hon'ble High Court in the said decision has held that they were of the opinion that in the past years, the interest expenditure has been allowed, it was not open to the Assessing Officer to disallow the said expenditure in the year under consideration. The Hon'ble Delhi High Court quoted the decision of the Hon'ble Karnataka High Court in the case of CIT vs Sridev Enterprises, reported in 192 ITR

165 (Karn.) which held that a departure from a finding in respect of deduction permitted during the past years would result in a contradictory finding.

10. Upon hearing both the counsel and perused the record, we find that the assessee's claim is that the said fund was provided to the sister concern out of own funds in earlier assessment years and no disallowance was made during the intervening periods. Now without any cogent reason, the Assessing Officer wants to change the stand. The Assessing Officer even wants to look at the details and accounts of Assessment Year 2013-14 which is admittedly not a reopening issue here. Ld. Counsel for the assessee has made out a cogent case. Hence, on the touchstone of the Hon'ble High Court decisions as above, we set-aside the orders of the authorities below and decide the issue in favour of the assessee.

11. In the result, the appeal of the assessee stands allowed.

Order pronounced in the open court on 08/08/2022.

**Sd/-**

**[YOGESH KUMAR US]  
JUDICIAL MEMBER**

**Sd/-**

**[SHAMIM YAHYA]  
ACCOUNTANT MEMBER**

**Delhi;** 08.08.2022.

*Shekhar,*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi