

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE SHRI P.M. JAGTAP, VICE-PRESIDENT
AND MS. MADHUMITA ROY, JUDICIAL MEMBER

ITA No. 979/Ahd/2018
Assessment Year : 2014-15

Bhupendra House Crane Services Pvt. Ltd., 1, Opp. ONGC Fire Station, Highway Road, Palavasana, Mehsana [PAN : AADCB 2969 H]	Vs	DCIT, Mehsana Circle, Mehsana
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Biren Shah, AR
Revenue by :		Shri V.K. Mangla, Sr. DR

सुनवाई की तारीख/Date of Hearing : 07/09/2022
घोषणा की तारीख /Date of Pronouncement: 12/10/2022

आदेश/O R D E R

PER P.M. JAGTAP, VICE-PRESIDENT :

This appeal filed by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals), Gandhinagar, Ahmedabad ["CIT(A) in short]" dated 08.01.2018.

2. The issue raised in Ground No.1 relates to the addition of Rs.9,218/- made by the Assessing Officer and confirmed by the learned CIT(A) on account of interest attributable to interest free advance paid to Shri Hoshiyarsingh B. Luhar.

3. The assessee, in the present case, is a company which is engaged in the business of providing crane on hire basis. The return of income for the year under consideration was filed by the assessee on 29.11.2014 declaring a total income of Rs.54,76,240/-. The case of the assessee was selected for scrutiny through CASS and a notice under Section 143(2) of the Income-tax Act, 1961 ("the Act" in short) was issued by the Assessing Officer to the assessee on 28.08.2015. During the

course of assessment proceedings, it was noticed by the Assessing Officer that the assessee has given interest free advance of Rs.1,85,167/- to Shri Hoshiyarsingh B. Luhar out of funds borrowed on interest. Since the said person was related to the assessee within the meaning of Section 40A(2)(b) of the Act and no satisfactory explanation was forthcoming from the assessee, interest attributable to the interest free advance of Rs.1,85,167/- given by the assessee to Hoshiyarsingh B. Luhar calculated at Rs.9,218/- was disallowed by the Assessing Officer. On appeal, the learned CIT(A) confirmed the said disallowance.

4. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. The learned Counsel for the assessee has submitted that a sum of Rs.71,34,793/- was payable by the assessee to M/s. New Bhupendra House Crane Services - a proprietary concern of Shri Hoshiyarsingh B. Luhar. He has submitted that the amount of Rs.1,85,167/- was paid by the assessee against the said liability but the same was wrongly debited to the personal account of Shri Hoshiyarsingh B. Luhar instead of his proprietary concern. To support and substantiate his contention, the learned Counsel for the assessee has invited our attention to the copies of the relevant ledger account placed at page Nos. 88-93 of the paper-book. The learned DR, on the other hand, has submitted that this contention raised by the learned Counsel for the assessee specifically for the first time before the Tribunal requires verification by the Assessing Officer. We find merit in this contention of the learned DR and since the learned Counsel for the assessee has also no objection for getting it verified by the Assessing Officer, we set aside the impugned order of the learned CIT(A) on this issue and restore the matter to the file of the Assessing Officer to decide the same afresh after verifying the claim of the assessee that the amount in question was actually paid towards repayment of liability to the proprietary concern of Shri Hoshiyarsingh B. Luhar and it did not constitute an advance given interest free. Ground No.1 of the assessee's appeal is accordingly treated as allowed for statistical purposes.

5. The issue raised in Ground No.2 relates to the addition of Rs.19,85,990/- made by the Assessing Officer and confirmed by the learned CIT(A).

6. As noted by the Assessing Officer during the course of assessment proceedings, there were certain credit balances in the books of the assessee which had not been paid for more than three years. Since the said credit balances representing trading liability payable by the assessee to four parties had remained outstanding for more than three years and there was no satisfactory explanation forthcoming from the assessee for keeping the said liability outstanding for more than three years, the Assessing Officer treated the said liability as ceased to have existed and made addition of Rs.19,85,990/- to the total income of the assessee under Section 41(1) of the Act. On appeal, the learned CIT(A) confirmed the said addition.

7. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. The learned Counsel for the assessee has submitted that all the four creditors in question representing the trading liability have been settled by the assessee by making payments to them in the subsequent year. He has invited our attention to the copies of ledger accounts of the said parties placed at page No.43 to 87 of the paper-book and contended that in view of the payments subsequently made by the assessee, the authorities below were not justified in treating the liability in question as ceased to have existed. Relying *inter alia* on the decision of Hon'ble Gujarat High Court in the case of Dattatray Paultry Breeding Farm (P.) Ltd Vs. ACIT, 104 taxmann.com 366, he has contended that the addition made by the Assessing Officer and confirmed by the learned CIT(A) by invoking Section 41(1) of the Act is not sustainable. The learned DR, on the other hand, has contended that the case made out by the learned Counsel for the assessee on this issue for the first time before the Tribunal requires verification by the Assessing Officer. We find merit in this contention of the learned DR. The impugned order of the learned CIT(A) on this issue is accordingly set aside and the matter is restored to the file of the Assessing Officer

for deciding the same afresh after verifying the claim of the assessee that the liability in question payable to four trade creditors was subsequently settled by making payments. On such verification, the Assessing Officer will decide the issue in the light of the decision of the Hon'ble Gujarat High Court in the case of Dattatray Paultry Breeding (P.) Ltd. (supra). Ground No.2 of the assessee's appeal is accordingly treated as allowed for statistical purposes.

8. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on 12th October, 2022 at Ahmedabad.

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad, Dated 12/10/2022

✍

Sd/-

(P.M. JAGTAP)
VICE-PRESIDENT

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधिआयकर अपीलीय अधिकरण ,/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

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आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad