

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 328/JP/2022
निर्धारण वर्ष / Assessment Year : 2016-17

M/s. Jai Ambey Wines C/o R.L. Mantri Chitrakut Colony, Chourasiyawas Road Vaishali, Ajmer	बनाम Vs.	The ITO Ward 1(2) Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAGFJ 7681 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Sunil Porwal, CA
राजस्व की ओर से / Revenue by: Smt. Monish Choudhary, JCIT-DR

सुनवाई की तारीख / Date of Hearing : 22/11/2022
उदघोषणा की तारीख / Date of Pronouncement: 15 /02/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 13-07-2022, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2016-17 wherein the assessee has raised the following ground of appeal.

“Disallowance of interest of Rs.19,41,398/- not in business expediency is also bad in law.”

2.1 Apropos solitary ground of the assessee, the facts as emerges from the order of the ld. CIT(A) at pages 18 & 19 are as under:-

“The AO further added a sum of Rs.19,41,398/-on account of disallowance of interest as the appellant is not showing interest income in respect of loan and advances of Rs.1,86,94,593/- while at the same time, the appellant claimed bank charged and interest of Rs.21,65,860/-. The appellant was asked to produce the books of accounts and to furnish justification of interest and business necessity for giving the interest free advance. The AO averred that the appellant is dealing in liquor business, however it has given advance to M/s Hotel Hard Rock, M/s AVR Business Pvt. Ltd, Hotel India, Hotel Jawahar International, JMD Real Estate Pvt. Ltd. without any business necessity. No supporting evidence has been provided by the appellant to prove that interest free advance has been given on account of business necessity. The appellant was having fixed assets of Rs.3,18,897/-. The appellant on one hand was paying huge interest of Rs.21,65,807/- and on the other hand given interest free advances without any business necessity. However, the appellant has not filed any supporting documentary evidence to prove that interest free advances were given out of interest free receipts.

The appellant has in respect of the above ground submitted that before making disallowance of interest paid on borrowed money alleged to have been advanced to sister concerns, what is required to be examined by the Assessing Officer is the extent to which benefit of borrowed funds is granted by way of allowing advances to sister concerns – CIT vs Motor General Finance Ltd (2005) 142 taxman 300 (Delhi).

“Where the Tribunal had retarded a finding that there was sufficient funds, other than borrowed money, available with the assessee in the form of share capital, share application money, reserves and surpluses for diverting a particular sum to its sister concern, it could not be said that the loan advanced to sister concern came out of the borrowed moneys – CIT vs Radico Khaitan Ltd. (2005) 142 taxman 681 (All).”

Thus when there is no dispute in genuineness of transaction, payer, payee there is no issue for even non charging of interest from debtors and others ‘‘CIT vs Indo Kopyy Ltd. (2008) 167 ITR 172 (Delhi)

The interest free funds as advanced are also to associate concerns with whom the funds are kept exchanged in emergency being in the same nature of business, it is prayed to delete the addition..’’

As per provisions of Section 37(1) expenses are allowed only when the same incurred wholly and exclusively for business purposes. Considering the facts, the capital of firm on which no interest is paid is considered for giving interest free advances. However, other interest free receipts shown from M/s, Jai Ambey Wines, Dehradun, Jai Wines Old, Ruby Enterprises, Sai Associates and Star Cong Trade is not considered for interest free advances as the appellant has not proved that receipts from these concerns have been subsequently given for interest free advances. Considering the above, it is treated as loan given without any business necessity and thus the addition by the AO on account of the interest disallowed, is upheld.

2.2 During the course of hearing, the ld. AR of the assessee has prayed that the ld. CIT(A) has erred in confirming the disallowance of interest of Rs.19,41,398/-. However, the ld. AR of the assessee filed the written submission with details of advances given to the parties.

2.3 On the other hand, the ld. DR supported the orders of the lower authorities and also relied upon the following case laws.

1. Jaipur Electro (P) Ltd. vs CIT (1996) 89 Taxmann 644 (Raj)
2. CIT vs T.S. Hajee Moosa & Co. (1985) 22 Taxman 250 (Mad.)
3. Mysore Kirloskar Ltd. vs CIT (1987) 30 Taxman 467 (Karnataka)
4. Goodlas Nerolac Paints Ltd. vs CIT (1982) 10 Taxman 25 (Bom)

5. Assam Pesticides & Agro Chemicals vs CIT (1998) 96 Taxman 366 (Gau)
6. Siddho Mal & Sons vs CIT (1980) 3 Taxman 1 (Delhi)

2.4 The Bench has heard both the parties and perused the materials available on record including the case laws cited by the parties. In this case, it is noted from the assessment order that the assessee is dealing in liquor business but it has given advances to M/s. Hotel Hard Rock, M/s. AVR Business Pvt. Ltd., Hotel India, Hotel Jawahar International, JMD Real Estate Pvt. Ltd. without any business necessity. No supporting documents had been placed before the AO to prove that interest free advances were given on business necessity while the assessee was having only fixed assets only of Rs.3,18,897/-. The assessee on one hand paid huge interest of Rs.21,65,807/- and on the other hand it had given interest free advances without any business necessity. The AO asked the assessee to prove the nexus that interest free receipts so received was given for interest free advances. During the course of hearing the ld. AR of the assessee submitted that the assessee has submitted justification before the AO as to business necessity for giving interest free advances which are as under:-

1. That during the year the assessee has paid the following amount to bank as interest and bank charges for business need.

Bank Charges	Rs.1,42,875.20
Bank interest	Rs.20,22,932.00

2. That the assessee has taken interest free amount from creditors of Rs.1,97,98,403.69 as per list against which interest free advances made of Rs.2,47,82,133.00 . Besides this the capital of partners sas on 31-03-2016 is Rs.79,03,819.66. Thus there are no diversion of funds. The capital of the partner is also interest free. The other debtors/ advances are in form of Application Fees, Licence Fees, TDS/TCS receivable etc. which are all in continuity and business expediency.

3. Thus it cannot be alleged that business funds have been diverted on such investments which are non interest bearing. Further all investments / advances as made are old and made in business expediency.

The Id. AR of the assessee has submitted the list of creditors and list of advances for the year. It is noted that the interest paid to bank Rs.20,22,932/- and bank charges Rs.1,42,875.20 are two different aspects. Thus the Bank charges of Rs.1,42,875.20 are payment to bank for banking transaction and it cannot be related to availability of funds rather it is charged for day today banking working. Bank interest Rs.20,22,932/- is interest paid on overdraft and rate of interest charged on O/D is 9% per annum. The Bench has observed from the available records that no new advances were made by the assessee rather all the advances are old and the assessee had sufficient sources to finance. Thus where it is clear that assessee has sufficient funds in the form of capital, interest free loans/ creditors for diverting a particular sum to its associate concern then it cannot be said that loan advances to such associate concerns came out of borrowed money and the AO was to examine the business expediency. Further when no interest was paid to

creditors/ advances received then no interest can be disallowed u/s 37(1) of the Act in case of interest free advances to associate concerns. To this effect, the ld. AR relied upon the decision in the case of CIT vs Radico Khaitan Ltd.(2005) 142 taxman. 681 (All) and CIT vs Motor General Finance Ltd. (2005) 142 taxman 300 (Del). Taking into consideration the above facts, circumstances of the case and the case laws (supra), the Bench does not concur with the findings of the ld. CIT(A). Thus the addition so sustained by the ld. CIT(A) amounting to Rs.19,41,398/- is deleted and the appeal of the assessee is allowed.

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

Order pronounced in the open court on 15 /02/2023

Sd/-
(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 15 / 02/2023

*Mishra

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

1. The Appellant- M/s. Jai Ambey Wines, Ajmer
2. प्रत्यर्थी / The Respondent- The ITO, Ward-1(2), Ajmer
3. आयकर आयुक्त / The ld CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 328/JP/2022)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar