

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH : COCHIN**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER AND
Ms. PADMAVATHY S., ACCOUNTANT MEMBER**

ITA Nos.693 & 694/Coch/2022
Assessment Years : 2018-19 & 2019-20

Akkavila Sajeenan Aggregates, TP/IX/531-538, Mukathala, Kollam – 691 577. PAN : AAXFA 8136C	Vs.	The Assistant Commissioner of Income Tax, Central Circle, Kollam.
APPELLANT		RESPONDENT

Assessee by	:	Shri Surendranath Rao, CA
Revenue by	:	Smt. J M Jamuna Devi, Sr. AR

Date of hearing	:	12.01.2023
Date of Pronouncement	:	20.01.2023

ORDER

Per Padmavathy S, Accountant Member:

These two appeals are against the common order of CITAA-3, Kochi dated 3.5.2022 for the assessment years 2018-19 & 2019-20.

2. The assessee is a partnership firm engaged in the business of manufacture and sale of crushed metal and allied products. The assessee filed the return of income for AYs 2018-19 & 2019-20 on 31.3.2019 and 3.5.2020 respectively. A survey u/s. 133A of the Act was carried out in the business premises of the assessee on 6.3.2019. The assessee's case was selected for scrutiny and statutory notices were duly served on the assessee. During the course of assessment, the

AO noticed that the assessee has advanced a sum of Rs.45,88,170 to one M/s. Lakshman Fuels. The assessee submitted before the AO that advances were given in the regular course of business as advance for purchases. The AO noticed that the advances were given by way of a direct withdrawal / transfer to Lakshman Fuels from the OD account of the assessee firm and that there was no business transaction other than advance payment during FY 2017-18. Accordingly, the AO disallowed a proportionate interest amount at Rs.6,04,697 u/s. 37. Aggrieved the assessee preferred appeal before the CIT(A).

3. The assessee submitted before the CIT(A) that advance was made with an intention of business but due to business slowdown, further transactions could not be done. The assessee also submitted that the capital account of the firm is in excess of advances made and therefore it cannot be said that there is a diversion of interest bearing fund. In this regard, the assessee relied on the decision in the case of *Hero Cycles P. Ltd. [2016]236 Taxman 447 (SC)* and in the case of *S.A. Builders [2007] 288 ITR 1 (SC)*. The CIT(A) did not accept the submissions of the assessee that the advance was made out of partners capital since there was a direct payment from the OD account during the year. The CIT(A) also noted that there was no other transaction other than the advance for the year ended 31.3.2018 and 31.3.2019 and therefore the assessee failed to prove the true nature and purpose of the advance made. Accordingly, the CIT(A) held that the interest paid to the extent of the advance amount is not expended wholly and exclusively for the purpose of business and confirmed the disallowance

made by the AO. Aggrieved, the assessee is in appeal before the Tribunal.

4. The Id AR submitted that the interest expenses can be disallowed only if it is found that the assessee has diverted the borrowed fund for non-business purpose and not used for the purpose of its own business. The Id. AR drew our attention to the financial statements of the assessee (pg. 7 & 9 of PB) where the capital account of the assessee is for an amount of Rs.1,04,76,500. Thus, it is submitted by the Id. AR that the capital available with the assessee is much more than the amount of advance and accordingly no disallowance is warranted.

5. The Id. AR submitted that the Hon'ble Supreme Court in the case of *Reliance Industries Ltd. v. CIT, 410 ITR 466 (SC)* has confirmed the view that when own capital is available which was sufficient to give advances, then such investments shall be presumed to be made from such own funds and not borrowed funds. Without prejudice, the Id. AR submitted that the assessee has filed the return of income u/s. 44AD determining the total income at 20.55% of the turnover and once the income is offered u/s. 44AD, all deductions u/s. 30 to 38 is deemed to be correctly allowed, no further addition can be made u/s. 44AD.

6. The Id. DR relied on the orders of lower authorities.

7. We heard the rival submissions and perused the material on record. The AO has made the disallowance of interest proportionately for the reason that the assessee has extended advance and there is no nexus between the amount advanced and the business of the assessee. We notice that for the year ended 31.3.2017 and 31.3.2018 the capital account of the partner stood at Rs.78,19,500 and Rs.1,04,76,500 respectively. Therefore, we see merit in the argument of the Id. AR that the amount of advance given is out of own funds thereby not warranting a disallowance u/s. 36(1)(iii). In this regard, we notice that the Hon'ble Supreme Court in the case of Reliance Industries Ltd. (*supra*) has held that when interest free funds are available to the assessee which are sufficient to meet the investments, it could be presumed that the investments were made from the interest free funds available with the assessee. We also notice that a similar view has been held in the following cases:-

- (i) ACIT v. Janak Global Resources P. Ltd., [2019] 112 taxmann.com 472. [Chandigarh Trib.]
- (ii) Munjal Sales Corporation v. ICT, 298 ITR 298 (SC)
- (iii) SMV Firm v. ACIT, Kollam, ITA No.585/Coch/2009 dtd. 24.8.2012
- (iv) ACIT v. Shri Johnson B. Oommen, ITA 26 & 27/Coch/2013 dtd. 23.8.2013.

8. From the perusal of the facts and considering the various judicial decisions, we are of the considered view that there is no diversion on the part of the assessee of interest bearing funds borrowed from banks and therefore no disallowance towards interest paid by the assessee on

the OD is warranted. Accordingly, the disallowance made by the AO for AYs 2018-19 and 2019-20 is deleted.

9. In the result, the appeals by the assessee are allowed.

Pronounced in the open court on this 20th day of January, 2023.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(PADMAVATHY S)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 20th January, 2023.

/Desai S Murthy/

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore/Cochin.