

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

(Conducted through Virtual Court)

ITA No.129/Ind/2015
Assessment Year: 2010-11
&
ITANo.774/Ind/2016
Assessment Year: 2011-12

Shri Surinder Singh Bhatia, 8/5, BCC House, Manoramaganj, Indore	<u>बनम/</u> Vs.	JCIT-3, Indore
(Appellant / Assessee)		(Respondent / Revenue)
PAN: ABHPB 5246 R		
Assessee by	Shri Harsh Vijayvargiya, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	23.03.2023	
Date of Pronouncement	31.03.2023	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

These are the two appeals filed by assessee. ITA No. 129/Ind/2015 (AY 2010-11) challenges the appeal-order dated 28.10.2014 passed by learned Commissioner of Income-Tax (Appeals)-I, Indore [**“Ld. CIT(A)”**], which in turn arises out of assessment-order dated 07.03.2013 passed by learned JCIT, Range-3, Indore [**“Ld. AO”**] u/s 143(3) of Income-tax Act, 1961 [**“the Act”**]. ITA No. 774/Ind/2016 (AY 2011-12) challenges the appeal-order dated 30.03.2016 passed by same CIT(A), which in turn arises out of

assessment-order dated 11.03.2014 passed by same AO u/s 143(3) of the act.

2. Both of these appeals relate to the same assessee; argued by same counsels and involve identical issues; therefore they were heard together and are being disposed of by this common order for the sake of convenience.

ITA No. 129/Ind/2015 (AY 2010-11):

3. We would first take up this appeal. The effective grounds raised in this appeal are as under:

“1. That on the facts and circumstances of the case the Ld. CIT has erred in confirming an addition of Rs. 233,720/- made towards adhoc disallowance of expenses out of BCC house maintenance.

2. That on the facts and circumstances of the case, the Ld. CIT has erred in confirming an addition of Rs. 2,00,000/- made out of adhoc disallowance of travelling expenses.

3. That on the facts and circumstances of the case the Ld. CIT has erred in confirming an addition of Rs.12,44,569/- out of interest paid, by invoking provision of section 36(1)(iii) of the IT Act 1961.”

Ground No. 1:

4. This ground relates to the adhoc disallowance of Rs. 2,33,720/- made by Ld. AO out of “BCC house maintenance expenditure” claimed by assessee.

5. During assessment-proceeding, Ld. AO observed that the assessee has debited Rs. 23,37,193/- to Profit and Loss A/c under the head “BCC house maintenance expenditure”. He further observed that (i) vouchers expenditure were unsigned, (ii) vouchers were not available, (iii) some vouchers were not supported with supporting evidences, and (iv) payments were also made in cash. Lastly, he observed that the expenditure claimed in current year was excessive as compared to the preceding year. With these observations, Ld. AO made a lump-sum disallowance of 10% of the total expenditure amounting to Rs. 2,33,720/-.

6. During first-appeal, the assessee submitted the components of the impugned expenditure under two broad-headings, viz. (i) staff salary, and (ii) other maintenance expenses. The assessee also submitted that the increase in overall quantum of expenditure is mainly because of increase in staff-salary. Thus, the assessee tried to explain the reason of increase in expenditure. But the Ld. CIT(A) concluded otherwise. He observed that the turnover of assessee has gone down from Rs. 115 crore to Rs. 102 crore and yet the salary to staff has registered increase from Rs. 17.19 lacs to Rs. 22.19 lacs. Ld. CIT(A) did not accept the submission of assessee and upheld the disallowance made by Ld. AO.

7. Before us, Ld. AR representing the assessee argued that the Ld. AO has not rejected the books of account of assessee. He submitted that the AO has made general remarks/observations in assessment-order without pointing out any single instance of defect in vouchers. He submitted that the books of account are audited and the auditors have not made any adverse remark. He argued that the AO has made 10% adhoc disallowance without any basis. He submitted that it has been consistently held in numerous decisions that the AO does not have any authority to make adhoc disallowance under any provision of Income-tax Act. He also relied upon the recent decision of ITAT, Raipur Bench in **Kailash Chand Agarwal Vs. DCIT, ITA No. 275/Rpr/2016 order dated 01.04.2022** where it has been categorically held thus:

"7.3. Our careful consideration of assessment records and the records of appellate proceedings it transpired that, neither of the lower tax authorities had pointed any such voucher, the genuineness of the expenditure therein claimed to have been incurred by the assessee wholly and exclusively for the purpose of its business did not inspire any confidence, nor it was the case of the revenue that any part of the expenditure in question was either found to be bogus or fictitious, nor was found to have not been incurred by the assessee wholly and exclusively for the purpose of his business. Indeed, it showcased an exercise of running around the circle by both the lower tax authorities while dealing with the present case.

7.4. We neither could come across any provision in the present Income Tax Statute nor it has been brought to our notice by either parties to dispute, which subscribes vis-à-vis authorises the tax authorities to arrive at this logic of subscribing ad-hoc disallowances. Evidently, there has been no clear findings as to number of vouchers requiring denial of allowances with the amount of expenditure and nature of defects therein or therewith, moreover department could not bring out any deprecative material on record to substantiate its conclusion as logical. We couldn't also see remotely there is any mention of rationale in arriving at the percentile of disallowance in the present case, consequently we find substantial force in the claim of the assessee that devoid of any specific infirmity qua the assessee's claim for deduction of the aforementioned expenditure by the lower tax authorities, and for the reason, the ad-hoc disallowance carried out in a most arbitrary manner could by no means be held to be justified."

With these submissions, Ld. AR urged to delete the disallowance.

8. Per contra, Ld. DR representing the revenue contested that the AO has found and clearly mentioned the types of defects in assessment-order, namely the vouchers were unsigned, unsupported, absent or having been paid in cash. He submitted that such observations of AO are based on scrutiny of books of account produced by assessee and cannot be said to be baseless. He submitted that the 10% disallowance made by AO is quite reasonable, justified and should be upheld.

9. We have considered rival submissions of both sides and perused the material held on record including the orders of lower authorities. We observe that though the AO has made observations to the effect that vouchers were unsigned, unsupported, absent or paid in cash, yet he has not mentioned a single instance of such lapse or defect. The observations/remarks made by AO are very general and nothing specific comes out. Ld. AR has observed that payments have been made in cash but nowhere he has mentioned that the cash-payment exceeded the statutory limit prescribed in section 40A(3) of the act. It is further observed that the AO has not rejected the books of accounts in terms of section 145 of the act; that means the books of account are acceptable to Ld. AO. Lastly, we observe that the AO has made an adhoc

disallowance of 10% which is against the view taken in numerous decisions of Hon'ble Courts / Benches of ITAT where it has been loudly held that that there is no authority in income-tax law to make or encourage disallowance on adhoc basis. One such decision given by Co-ordinate Bench of ITAT, Indore holding the same ratio is **DCIT-1(1), Indore Vs. Brilliant Estate Pvt. Ltd., ITA No. 349/Ind/2017 dated 13.12.2018**, where it has been held thus:

“24. We find that the assessee is a limited company and has maintained regular books of account and financial statement are duly audited and books results have not been rejected by the Brilliant Estate Pvt. Ltd. No major discrepancies have been noticed. Disallowance of Rs. 2,00,000/- has been merely made on the observation that some of the expenditure are incurred in cash and some vouchers are self-made and surprisingly there is no specific observation by the Ld. AO which could prove that the assessee has claimed the expenses with a motive to evade the tax nor any observation has been made by the Ld. AO for challenging the genuineness of the particular expenditure. In these given facts and circumstances merely making an ad-hoc disallowance of Rs. 2,00,000/- and completely disregarding the audited financial statements was certainly not justified on the part of the Ld. AO. Therefore we find no infirmity in the finding of Ld. CIT(A) deleting the disallowance of Rs. 2,00,000/- placing reliance of various judgments. In the result ground no.2 raised by the revenue stands dismissed.”

10. Therefore, we observe that the approach of adhoc disallowance without citing a single instance of specific lapse by assessee is not in accordance with law. Being so, we are not in a position to countenance the adhoc addition made / sustained by revenue-authorities. Resultantly, we are inclined to delete the same; accordingly we direct the AO to delete the addition. This ground is thus allowed.

Ground No. 2:

11. This ground relates to the adhoc disallowance of Rs. 2,00,000/- made by Ld. AO out of travelling expenses.

12. During assessment proceedings, Ld. AO observed that the assessee has claimed travelling expenses of Rs.14,93,610/-. He further observed that (i) vouchers were self-made and (ii) vouchers were not supported by

supporting evidences. Ld. AO further observed that personal element out of the expenditure cannot be ruled out. He further observed that there was increase in quantum of expenditure as compared to preceding year. With such observations, he made a lump-sum disallowance of Rs. 2,00,000/-.

13. During first appeal, Ld. CIT(A) confirmed disallowance with the reasoning that the assessee has failed to justify as to why the quantum of expenditure has gone up when the turnover has come down.

14. Learned Representatives of both sides made the same line of pleading as made in preceding Ground No. 1. We observe that the AO has made adhoc disallowance and the factual and legal aspects are broadly same as elaborately discussed by us in Ground No. 1. Therefore, without delving much, we adopt the same view i.e. the adhoc disallowance made by AO cannot be sustained; accordingly we direct the AO to delete this addition too. This ground is also allowed.

Ground No. 3:

15. This ground relates to the disallowance of Rs. 12,44,569/- out of interest expenditure claimed by assessee u/s 36(1)(iii).

16. During assessment-proceeding, Ld. AO observed that the assessee has advanced loans to its sister concerns/family members by charging interest @ 4 to 6% whereas the assessee has himself taken loans @ 12%. When the AO confronted the assessee for disallowance of proportionate interest, the assessee submitted that he was having interest-free funds own funds in the form of capital to the tune of Rs. 4,22,90,338/- and therefore the loans were given out of capital of assessee and not out of interest-bearing borrowed funds. Ld. AO, however, was not satisfied with assessee's submission. He observed "*It is observed that advances to the family members are not given for the short period as claimed by the assessee; most of the advances were outstanding from the last many years*". He further observed that when the

assessee was having interest-free funds, there was no need to borrow funds from banks and simultaneously make loans to sister concerns/family members. He critically observed that the assessee has charged interest @ 4 to 6% on loans given, which is much lesser than the interest @ 12% paid on borrowed funds. Relying upon certain judicial rulings, Ld. AO made a disallowance of Rs. 12,44,569/-.

17. During first appeal, Ld. CIT(A) upheld the disallowance by observing and holding as under:

*“8. Ground no.4 of appeal is against disallowance of Rs.12,44,569/- out of interest paid by invoking provisions of section 36(1)(iii) of the Income Tax Act, 1961. The AO observed that appellant has charged interest on “Advance given” at only 4 to 6% while it has paid interest on loans taken at 12%. Therefore, interest income of Rs.24,28,252/- at the rate of 4 to 6% is suppressed or diverted to sister concerns, as the interest of Rs.36,79,687/- is paid at the rate of 12% on various secured & unsecured loans. Appellant has not come forward with any worthwhile explanation of charging less rate of interest on advances given to sister concerns except the argument that appellant has interest free funds in terms of proprietor's capital of Rs. 4.22 Crores, secured loans of Rs.8.52 Crores and current liabilities and provisions of Rs.34.96 Crores. Appellant has made such argument only for the sake of it, without mentioning the other side of balance sheet which makes it clear that proprietor capital is gone into gross block of fixed assets of Rs.37.83 lacs, cash and bank balance of Rs.1.73 Crores and sundry debtors of Rs.14.12 Crores. Besides "current liabilities and provisions" of Rs. 34.96 Crores mainly constitutes sundry creditors of Rs.5.12 Crores (2.88 + 1.07 + 1.17), customer advance of Rs.7.81 crores and freight unpaid port of Rs. 23 Crores, which are completely set off by balance amount of sundry debtors of Rs.14.12 Crores and "advances and deposits" of Rs. 26.13 Crores (31.48 - 5.35) excluding "advances" of Rs. 5.35 Crores (2.07 + 3.28) extended to sister concerns. From the aforesaid discussion, it is absolutely clear that "advances" of Rs.5.35 Crores were given to sister concerns at 4 to 6% interest rate directly out of interest bearing borrowed funds of Rs. 8.52 Crores, which are taken at interest rate of 12%. As appellant could not provide any reason for diverting borrowed funds taken at higher rate of interest to sister concerns at lower rate of interest and no details of charging of rates from individual party are provided, hence disallowance of Rs. 12,44,569/- as made by Assessing Officer is hereby confirmed. Reliance is placed on the decisions in cases of *Harrisons Malayam Ltd.* [2012] 25 taxman.com 546 (Kerala) and *Punjab Stainless Steel Ind.* [2010] 324 ITR 396 (Del.). Ground No. 4 of appeal is dismissed.”*

18. During hearing before us, Ld. AR attacked the orders of lower authorities on several premises. At the outset he submitted that the AO has

recorded a patently incorrect finding that the assessee has not given short-term loans to sister concerns/family members, the loans were outstanding for many years. Drawing our attention to Page No. 129 of the Paper-Book where a “party-wise details of advances” has been given, Ld. AR pointed out that majority of the loans were given during the year and also received back during the year; therefore the loans were short-term. Then, Ld. AR submitted that the assessee has given loans to sister concerns/family members as a matter of commercial expediency. Then, he submitted that the assessee had to take loan @ 12% because the business-needs cannot be predicted in advance and a businessman has to maintain liquidity in business; on the other hand the assessee could advance loans to sister concerns/family members @ 4 to 6% only. Next, referring to the order of Ld. CIT(A), he submitted that the Ld. CIT(A) has made baseless finding that the assessee’s own capital has gone into fixed assets, cash and bank balances, sundry debtors, etc. and the borrowed funds have been utilized to give loans to sister concerns/family members. Lastly, he submitted that it is for the revenue-authorities to establish that the assessee has diverted borrowed funds for making loans/advances which they have not done. He referred to a few judicial rulings in favour of assessee which held that unless revenue proves the diversion of borrowed funds to non-business use, disallowance cannot be made particularly in a situation where the assessee has own capital.

19. Replying to above, Ld. DR strongly opposed the submissions of Ld. AR and defended the orders of lower authorities. He emphasized certain vital facts, namely (i) the assessee is claiming commercial expediency for the sake of arguments but there is no iota of evidence given by assessee in this regard, (ii) the fact that the assessee has charged interest @ 4 to 6% despite borrowing himself @ 12% is more than enough to infer that the assessee has claimed excessive/wrong deduction in computing his taxable income. Ld. DR further submitted that it is the assessee who knows from where the funds come and to where the funds go; therefore it is the duty of assessee to

explain the sources from which the loans/advances have been made to sister concerns/family members. Ld. AR emphasized that since the assessee is claiming deduction of interest on borrowed funds u/s 36(1)(iii) as a business expenditure, it is the duty of assessee to prove that the borrowed-funds were used only and only for his own business. The assessee can't shift burden onto the tax authorities to prove otherwise. Ld. DR also submitted that rather than supplying the details and discharging the burden cast on himself, the assessee is just making a heightened claim that he had his own capital, therefore such capital would have been used for giving loans. Lastly, Ld. DR defended the finding made by Ld. CIT(A) with the submission that the assessee's capital never remains idle; it is always blocked in business assets like fixed assets and working capital in the form of cash, bank, stock, sundry debtors. He submitted that the CIT(A) has, therefore, rightly concluded that borrowed funds have been used for giving loans to sister concerns/family members.

20. We have considered rival submissions of both sides and perused the orders of lower authorities. After a careful consideration, we observe certain facts. Firstly, on perusal of Page No. 129 of Paper-Book, we agree to the submission of Ld. AR that majority of loans were given/returned back during the year, only a few were outstanding from earlier years. But, however, we do not agree to submission of Ld. AR that the loans were given for commercial expediency for the simple reason that there is no material on record to prove the existence of commercial expediency and nothing in this respect has been placed before lower authorities or even before us during hearing. Regarding the necessity of maintaining liquidity in business raised by Ld. AR, we referred to Page No. 32 of the Paper-Book where Schedule No. 2 to the Balance-Sheet is placed and raised a query to Ld. AR that the assessee has taken loans by way of O/D and C/C from banks which are available round the clock wherein borrowals as well as repayments are permitted freely without any time-restriction, then the liquidity is automatically available and there is no need to hold funds and advance just

@ 4 to 6% to sister concerns/family members? Ld. AR could not successfully answer our query though he continued to iterate the liquidity aspect. Turning to the arguments of Ld. DR, we find a strong merit in his contention that the assessee has borrowed funds @ 12% and given loans/advances to his sister concerns/family members just @ 4 to 6% only; there is absolutely no justification in this. Going further to the ultimate rival argument of both sides, while we appreciate the submission of Ld. AR that it is for the revenue authorities to prove the diversion of funds, we find equal force, rather more, in the submission of Ld. DR that since the assessee is claiming business deduction u/s 36(1)(iii), it is for the assessee to establish that the borrowed funds have been used exclusively for his own business. Ld. DR also has weightage in his argument that ideally a businessman would invest his own capital in business-assets and not for giving loans to others, therefore in the absence of full details, the Ld. CIT(A) has rightly observed that the assessee has used own-capital for fixed assets and working capital of business and it is only the borrowed-funds which have been used for giving loans.

21. Having discussed the arguments of both sides, we now revert back to the assessment-order where the Ld. AO has made disallowance of Rs. 12,44,569/- based on following figures:

Interest paid to bank	36,79,687
Less: Interest received	24,28,252
Net interest paid	12,51,435
Less: Interest paid on TDS already disallowed by assessee in return	6,866
Net disallowance made by AO	12,44,569

Clearly, therefore, the AO has disallowed entire net interest expenditure as if the assessee has utilized whole of the borrowed-money for giving loans/advances and not used even a penny for business purpose. This does

not appear to be correct. In any case, it is also noteworthy that both sides are just running round the circle and making rival claims but there is no specific verification made at lower level or even now coming from either side as to which funds have gone where? Needless to repeat that the Ld. AR has already proved in the foregoing discussion that majority of loans were given during the year itself. When it is so, the sources of giving loans, whether own-capital of assessee or borrowed funds, can be easily ascertained from the books of assessee. But this would entail a verification on the part of AO. Therefore, in the present situation, it would be fair and most appropriate if the issue is remitted back to Ld. AO for such verification. This would not harm any side, rather it would help in determining the more accurate quantum of disallowance, if at all required. Being so, we remand this issue back to the file of AO who will verify the source of loans given by assessee and take a final call on the issue. The assessee is directed to provide all details required by AO. This ground is, thus, allowed for statistical purpose.

ITA No. 774/Ind/2016 (AY 2011-12):

22. Now we take up this appeal. The effective ground raised in this appeal is as under:

“That on the facts and circumstances of the given case, the learned CIT(A) has erred in confirming the addition of an amount of Rs. 46,42,904/- out of interest paid during the year.”

23. Both sides agree that this issue is identical to Ground No. 3 of AY 2010-11 and there is no change in facts. Being so, the view taken by us in foregoing discussion while adjudicating Ground No. 3 of AY 2010-11 shall apply *mutadis mutandis*; accordingly this ground is also remitted back to the file of AO; thus allowed for statistical purpose.

24. Resultantly, both of these appeals are allowed/statistically allowed in terms indicated above.

Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 31/03/2023.

Order pronounced in the open court on/...../2023.

Sd/-

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 31.03.2023

Patel/Sr. PS

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

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*

1.	Date of taking dictation	
2.	Date of typing & draft order placed before the Dictating Member	
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the approved draft is placed before other Member	
5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	
7.	Date on which the file goes to the Head Clerk	
8.	Date on which the file goes to the Assistant Registrar for signature on the order	
9.	Date of dispatch of the Order	