

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.12/Asr/2023
Assessment Year: 2013-14**

Kunal Garg, 2301, Aggarsain Nagar, Amrik Singh Road, Bhupindra Flour Mills Area, Bathinda. [PAN:ALJPG6434E] (Appellant)	Vs.	Dy. Commissioner of Income Tax, Circle-1, Bathinda. (Respondent)
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Appellant by	Sh. Sudhir Sehgal, & Sh. P. N. Arora & Sh. P.K. Singla, Advs.
Respondent by	Sh. S. M. Surendra Nath, Sr. DR

Date of Hearing	16.05.2023
Date of Pronouncement	30.05.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals), NFAC, Delhi,[in brevity the ‘CIT (A)’], order passed u/s 250of the Income Tax Act 1961, [in brevity ‘the Act’] for A.Y.

2013-14. The impugned order was emanated from the order of the Id. DCIT, Circle-1, Bathinda order passed u/s 143(3)/263 of the Act.

2. The assessee has taken the following ground:

“1. The Id. CIT(A) has erred both in law and on facts in upholding the addition made by the Id. AO amounting to Rs 12,69,700/- in accordance with the provisions of section 36(1)(iii) of the Act by holding that the funds available in the form of sundry creditors are not interest free in nature whereas such funds are interest free funds only. As such, addition confirmed is unjustified and uncalled for. The same be deleted.

2. That the Id. CIT(A) has erred both on law and on facts in upholding the addition made by the Id. AO amounting to Rs 12,69,700/- against the principles of natural justice i.e. without passing a speaking order and merely stating that the funds available in the form of sundry creditors are not interest free in nature. As such, addition confirmed is illegal, unjustified and uncalled for. The same be deleted.

3. That the appellant craves to add, amend or alter any ground of appeal on or before the hearing.”

3. Brief fact of the case is that the assessment was framed by the Id. AO as per the direction of the order u/s 263 of the Act. The moot point is that the disallowance of expenses u/s 36(1)(iii) amount to Rs.12,69,700/- on account of non

charging of interest on advanced amount to M/s Lala Bhan Chand Memorial ignoring the direction of the Id. CIT(A) as per para 25 of the appeal order dated 29.05.2019. The relevant para is extracted as below:

“25. However, though it has been stated in the written submissions that the appellant had enough and surplus non-interest-bearing funds to cover the interest free advances, the same could not be demonstrated during the appellate proceedings. The AO is, therefore, directed to ascertain the availability of interest-free funds with the appellant and only if the same is found to be in excess of the interest-free advances in question, the impugned disallowance of interest be deleted. It is ordered accordingly. This ground of appeal is, thus, decided in the manner as indicated above.”

4. The assessee claimed that the advance was paid from interest free fund which has related to assessee's sundry creditors amount of Rs.13,10,99,196/- where assessee is advancing interest free loan amount to Rs.1,05,80,823/-. Accordingly, the interest was calculated on interest free loan amount and said amount was disallowed u/s 36(1)(iii) of the Act. The assessee filed an appeal and the order of appeal was passed on dated 29.12.2022. The Id. CIT(A) upheld the observation of the Id. AO. Being aggrieved assessee filed an appeal before us.

5. The Id. AR, Mr. Sudhir Sehgal, Advocate vehemently argued and placed that this is an appeal filed by the assessee and the only ground of appeal with regard to sustaining of addition of Rs. 12,69,700/- vide order, dated 16.11.2018 and the matter was carried to the Ld. CIT(A) Bathinda, who vide order, dated 29.05.2019 had set aside the issue to the file of the Assessing Officer to examine the availability of 'interest free funds.

5.1. The Id. AO vide letter, dated 24.06.2019 asked us to appear before him to prove the availability of funds with the Assessee. The assessee filed a letter, dated 02.07.2019 at **APB page 37**, along with balance sheet from pages 38 to 48 of Paper Book and gave the detail of "interest free funds" available with the assessee. Copy of the letter is very much clear and apparent.

5.2. The Id. AO has not considered the reply filed by the assessee and again made the addition of Rs. 12,69,700/-. Actually, the total 'interest free funds' available with the assessee has been to the tune of Rs.13,10,99,196/-, which comprises of interest free sundry creditors and other payables and which is also apparent from the balance sheet of the assessee, placed at **APB page 40** and these are interest free funds available with the assessee, as the assessee has not to pay any interest on the amount due to the parties and this fact is supported by the

Judgement in the case of **Gourav Malhotra & Co.vs The DCIT, CC-IIITA No. 1058/CHD/2018** Date of pronounce **22/05/2019**

4. Before us, the Ld. AR of the assessee has submitted that the assessee was possessed of sufficient own funds to meet the interest free advances given during the year. That the assessee had interest free funds in the shape of partners capital, sundry creditors and unsecured loans totalling ₹ 4,28,05,422/- which were sufficient to meet the interest free advances to the assessee. The Ld. Counsel has also further submitted that the loan funds were taken and used for specific purposes for day to day working of the business of the assessee.

The submissions of the assessee are that the interest free funds were available with the assessee including sundry creditors has been held to be in order as per finding given in para 6. page 51 of the paper book. Thus, the interest free funds are available with the assessee and there is no case of disallowance of interest and reliance is being placed on the following judgments as well that if there are sufficient interest free funds, then no disallowance of interest u/s 36(1)(iii) is called for: -

i) CIT Vs Reliance Utilities & Power Ltd. [2008] 178 taxman 135 / 313 ITR 340 (Bombay)

“10. If there be interest-free funds available to an assessee sufficient to meet its investments and at the same time the assessee had raised a loan it can be presumed that the investments were from the interest-free funds available. In our opinion the Supreme Court in East India Pharmaceutical Works Ltd.'s case (supra) had the occasion to consider the decision of the Calcutta High Court in Woolcombers of India Ltd.'s case (supra) where a similar issue had arisen. Before the Supreme Court it was argued that it should have been presumed that in essence and true character the taxes were paid out of the profits of the relevant year and not out of the overdraft account for the running of the business and in these circumstances the appellant was entitled to claim the deductions. The Supreme Court noted that the argument had considerable force but considering the fact that the contention had not been advanced earlier it did not require to be answered. It then noted that in Woolcombers of India Ltd.'s case (supra) the Calcutta High Court had come to the conclusion that the profits were sufficient to meet the advance tax liability and the profits were deposited in the overdraft account of the assessee and in such a case it should be presumed that the taxes were paid out of the profits of the year and not out of the overdraft account for the running of the business. It noted that to raise the presumption, there was sufficient material and the assessee had urged the contention before the

High Court. The principle therefore would be that if there are funds available both interest-free and overdraft and/or loans taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the company, if the interest-free funds were sufficient to meet the investments. In this case this presumption is established considering the finding of fact both by the CIT (Appeals) and ITAT.”

ii). **CIT Vs Reliance Industries Ltd.[2019] 102 taxmann.com 52 (SC)**

“7. Insofar as the first question is concerned, the issue raises a pure question of fact. The High Court has noted the finding of the Tribunal that the interest free funds available to the assessee were sufficient to meet its investment. Hence, it could be presumed that the investments were made from the interest free funds available with the assessee. The Tribunal has also followed its own order for Assessment Year 2002-03.

8. In view of the above findings, we find no reason to interfere with the judgment of the High Court in regard to the first question. Accordingly, the appeals are dismissed in regard to the first question.”

In view of the above said facts, the additions as made by the Assessing Officer deserves to be deleted.

6. The ld. DR vehemently argued and relied on the order of the revenue authorities.

7. We heard the rival submission and relied on the documents available on the record. The assessee utilized the interest free fund to advance/loan, to party. The assessee claimed that the entire amount was utilized from the non-interest-bearing fund. We respectfully relied on the orders which are duly relied by the ld. AR,are ITAT Chandigarh Bench in the case of M/s **Gourav Malhotra & Co. Vs. DCIT,**

ITA No. 1058/Chd/2018 order dated 22.05.2019(supra) and the order of Hon'ble Apex Court in the case of **Reliance Utility and Power Ltd. and Reliance Industries Ltd.** (supra). Accordingly, the assessee's payment for advance from non-interest-bearing fund is not attracted any interest. So, the assessee has not contravened the section 36(1)(iii) for payment of interest free advance. The issue was first time explained before the Bench. The appeal is remanded back to the Id. CIT(A) for further adjudication on basis of the observation of the bench indicated above.

8. In the result, the appeal of the assessee bearing **ITA No. 12/Asr/2023** is allowed for statistical purpose.

Order pronounced in the open court on 30.05.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

AKV

Copy of the order forwarded to:

- (1)The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

Sd/-

(ANIKESH BANERJEE)
Judicial Member

True Copy
By order