

आयकर अपीलीय अधिकरण, कोलकाता पीठ “सी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 1158/Kol/2019
Assessment Year: 2011-12

Falcon Vincon Pvt. Ltd. (PAN:AABCF 3203 C)	Vs.	ITO, Ward-9(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	30.05.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	16.06.2023
For the Appellant/ निर्धारिती की ओर से	Shri A. K. Tibrewal, FCA
For the Respondent/ राजस्व की ओर से	Shri G. Hukugha Sema, CIT

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-3, Kolkata (hereinafter referred to as the Ld. CIT(A)”) dated 25.03.2019 for the AY 2011-12.

2. Issue raised in ground no. 1 is general in nature and does not require any specific adjudication.

3. Issue raised in ground no. 2 is against the confirming the disallowance of Rs. 31,51,288/- by Ld. CIT(A) by invoking provisions of section 36(1)(iii) of the Act which was made by the AO on account of notional interest @12% on unsecured loans advanced free of interest.

4. Facts in brief are that the AO, on perusal of books of accounts and details filed by the assessee, observed that the assessee debited interest expenditure amounting to Rs. 42,33,309/- on unsecured loans of Rs. 44,30,73,060/- taken from various persons by the assessee. The AO also noted that the assessee has given loans amounting to Rs. 2,62,60,730/- to three persons without charging any interest. The AO further observed that the assessee has paid interest @ 12% on unsecured loans whereas no interest was charged on the loan advance during the year and accordingly the AO came to the conclusion that deemed interest has to be charged @ 12% and added to the income of the assessee. The Id calculated the interest at Rs. 31,51,288/- by applying 12% on the money advanced free of interest and the same was added to the income of the assessee in the assessment framed u/s 143(3) of the Act.

5. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee by affirming the order of AO on this issue by holding that the assessee has failed to prove that the interest free advances /loans were given out of commercial expediency and therefore interest bearing loans taken were not utilized for the purpose of business. The Ld. CIT(A) confirmed the disallowance u/s 36(1)(iii) of the Act which provides for allowability interest paid in respect of borrowed capital for purpose of business and thus confirmed the disallowance without giving any show cause only to the assessee before invoking Section 36(1)(iii) of the Act.

6. After hearing the rival contentions and perusing the material on record, we find that undisputedly the assessee has given loans to the tune of Rs. 2,62,60,730/- on which no interest has been charged whereas on the other hand it has borrowed money by way of unsecured loans from various parties for which interest of Rs. 42,33,309/- was paid @ 12%. In our opinion not charging of interest on loans advanced would

not entitle the AO to make addition towards notional interest. We have to consider several factors and establish that funds were paid out of interest bearing funds taken by the assessee. In the present case, we observe from the balance sheet of the assessee and various other documents filed that the assessee has not borrowed any fresh funds during the year rather loans were repaid during the year. We observe that at the end of year 31.03.2010, the secured loans and unsecured loan were Rs. 14,26,91,496/- whereas as on 31.03.2011 the aggregate loans were of Rs. 11,00,07,403/- . Similarly we observe that the money advanced by the assessee during the year was Rs. 2,62,60,730/- comprised of three parties out of whom Rs. 1,79,24,200/- is opening balance which was advanced/transferred from Tulsi Damodaran to Chakresh Commoscals Pvt Ltd as is apparent from the schedule no. 5 annexed to balance sheet titled "Current Assets, Loans & Advances". We observe that Rs. 1,72,24,200 represented opening balance and during the year it was transferred to Chakresh Commosales Pvt. Ltd. We have also examined the copies of accounts in respect of loans advanced and find that these advances were given at the fag end of the year. After having perused the facts before us ,we find that these loans were not given out of borrowed funds and therefore the addition made by the AO as well as its confirmation by the Ld. CIT(A) cannot be sustained. So accordingly we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the addition. Accordingly ground no. 2 is allowed.

7. Issue raised in ground no. 3 is against the confirmation of disallowance of Rs. 5,75,875/- by Ld. CIT(A) which was disallowed by the AO on account of deduction of tax u/s 40(a)(ia) of the Act.

8. Facts in brief are that the AO observed that the assessee has paid interest of Rs. 42,57,967/- however TDS were deducted on Rs. 36,82,092/- only meaning thereby that no TDS were deducted on the interest of Rs. 5,75,875/-. The AO added this amount to the income of the assessee when assessee did furnish satisfactory explanation u/s 40(a)(ia) of the Act.

9. In the appellate proceedings the Ld. CIT(A) dismissed the appeal of the assessee by observing that the assessee has failed to give a certificate of the auditor stating that the payee also offered same for taxation and also rejecting the contentions of the assessee that assessee has deducted tax at the lesser amount than provided under the Act whereas the disallowance can only be made where the assessee has failed to deduct tax at source.

10. After hearing the rival parties and perusing the material on record, we find that in this case the assessee has deducted tax at lesser rate and it is the case of short deduction of tax. Thus the reliance made by the assessee on the decision of Hon'ble Delhi High Court in the case of Ansal Landmark Township Pvt. Ltd. in 377 ITR 365 (Del) is relevant. In our considered view, the disallowance cannot be made where the assessee has deducted tax at a rate which is lesser than what is provided under the Act. Accordingly we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

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

Order is pronounced in the open court on 16th June, 2023

Sd/-

Sd/-

(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 16th June, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Falcon Vincon Pvt. Ltd, 102, Tower No. 12, Shriram Sameekhsha, New Gangamma Gudi Police Station Road, Naidu layout, Bengaluru-560015.
2. Respondent – ITO, Ward-9(1), Kolkata
3. Ld. CIT(A)-3, Kolkata

4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata