

IN THE INCOME TAX APPELLATE TRIBUNAL
“DB” BENCH, JODHPUR
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

ITA No. 213/Jodh/2018

(A.Y: 2012-13)

Shri Mahendra Kumar Goyal HUF, M/S Merita & Co, CA 244, Kamala Nehru Nagar, opp; Prakartik Chikitsa Kendra, Chopasni Road, Jodhpur-348008, Rajasthan	Vs.	ITO – Ward-2 Pali, Marwar, Pali-306401, Rajasthan
PAN/GIR No. : AAEHM7139L		
Appellant	..	Respondent

Assessee by :	Shri N. R Mertia, CA
Revenue by :	Ms. Nidhi Nair, JCIT -DR

Date of Hearing	14.08.2023
Date of Pronouncement	17.08.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)(CIT(A)-I, Jodhpur passed u/s 143(3) and 250 of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal as under:

1. *In the facts and circumstances of the case the ld. Commissioner of Income Tax (Appeals-1), Jodhpur has erred in law and facts in maintaining the disallowance of interest made by ld. A.O of Rs. 4,61,473/- (3,11,690/- + 1,49,783/-) by invoking Sec. 36(1)(iii) of the Act which the ld. CIT(A) erroneously and unjustifiedly held as right actions on the part of the Id. A.O. The actions being erroneous and unjustified may kindly be cancelled. The Hon'ble ITAT may kindly allow the appeal by allowing the claimed interest as revenue expenditure.*

2. *That in the facts and in the circumstances of the case the ld. CIT(A) also erred in law and facts in not appreciating the facts on record that the appellant had only used his own funds and no borrowed funds were used in any event to the extent the ld. A.O had assumed, which facts the ld. CIT(A) failed to appreciate and thereby erred in maintaining the finding and disallowance made by Id. A.O.*

3. *That without prejudice to both the grounds appeal No. 1 & 2 above and alternatively, it is urged that in no event the payments which were made to M/s Mehta Cooling Pvt. Ltd even if are from the borrowed funds after the coming into full-fledged operation of the plant of the second unit in the month of July, 2011 when the commercial production started and the sales were made. The ld. CIT(A) erred in holding otherwise in this regard ignoring the facts before him. He ought not to have disallowed the claimed interest on such funds.*

4. That in the facts and circumstances of the case the ld. CIT(A) erred in law and facts in not deciding the grounds of appeal No. 1 & 2 before him, challenging the validity of the assessment order and the jurisdiction of Id. A.O under CASS for which detailed written submission with judicial supports was filed and, therefore, the impugned order is bad in law and bad in fact and is unsustainable in the eye of law because both these grounds go to root of the entire proceeding. The Hon'ble ITAT may kindly hold the impugned order as unsustainable and without jurisdiction to the extent it is beyond the power of ld. A.O under CASS after summoning and verification of assessment record of A.O.

5. That the ld. CIT(A) erred in law and facts in holding that ground No. 1 was as that of routine nature (Pg. No. 2) and erred in not deciding grounds No. 1 & 2 before him. His this in action tantamount rejection of both the grounds of appeal i.e. No. 1 & 2.

6. The appellant craves leave to add, alter, substitute withdraw, modify or amend any of the ground of appeal here in above taken on or before the hearing.

7. The appellant prays that his appeal may kindly be allowed, cancelling the impugned sustained action of ld. A.O by CIT(A)

At the time of hearing, the Ld.AR submitted that the assessee is not pressing the grounds of appeal no.4 & 5 and made endorsement in the appeal memo.

Accordingly, the above grounds are withdrawn and are dismissed.

2. The brief facts of the case are that, the assessee is engaged in the manufacturing and trading of Flour, Maida etc under the name and style of M/s Shrinath Marketing and the assessee is having contract with the State Government for supply of fortified Atta to various PDS Schemes under State Government of Rajasthan. The assessee has filed the return of income for the A.Y 2012-13 on 30.09.2012 disclosing a total income of Rs.6,91,500/- and the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act along with questionnaire was issued. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and submitted the details comprising of audited trading account, profit and loss account and balance sheet, copies of ledger account, and details of various expenses debited in profit and loss account, copy of bank statement and copy of TDS return filed. On perusal of the financial statements, the AO find that the GP rate was not properly considered and the

assessee has made various claims in the books of accounts, since the assessee could not substantiated with the complete details, the AO has estimated addition @10% of the total expenses of Rs. 76,27,261/- which worked out to Rs. 7,62,726/-.

3. On the second disputed issue, the AO found that the assessee has established II nd Unit of M/s Srinath Trading at Industrial Area, Pali during the year and the processing of work has been started from Aug 2011. The assessee for the purpose of establishment of unit has made capital investment of Rs. 62,33,810/- on building, Rs. 25,00,000/- in land and Rs. 39,95,662/- on machinery and the assessee was asked to explain the source of investments and the non interest bearing funds utilized and the generation of cash from the customers. Whereas the assessee has filed the detailed submissions on the sources and interest bearing funds and own capital. The AO has dealt on the various facts on the disputed issue and the provisions of Sec. 36(1)(iii) of the Act and is of the opinion that assessee has expanded his business for establishing a new unit, therefore estimated the proportionate interest @ 12% on the

expenses of the unit up to the stage of commencement of production which works out to Rs. 4,61,473/- and was disallowed out interest expenses debited/ claimed in the profit and loss account and added to the actual cost of unit and assessed the total income of Rs.18,40,410/- and passed the order u/s 143(3) of the Act dated 24.03.2015.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the AO and has confirmed the addition with respect to disallowance of interest u/s 36(1)(iii) of the Act which was debited to the profit and loss account and has granted partial relief in other grounds of appeal and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Honble Tribunal.

5. At the time of hearing the Ld. AR submitted that the CIT(A) has erred in not considering the fact that the assessee has own / surplus funds more than the interest bearing funds utilized for the purpose of

establishment of unit and hence no interest disallowance is warranted and the Ld. AR substantiated the submissions with the factual paper book and judicial decisions and prayed for allowing the appeal..Contra, the Ld. DR supported the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The sole disputed issue as envisaged by the Ld. AR that the CIT(A) has erred in sustaining the addition of Rs. 4,61,473/- in respect of disallowance of interest which was claimed in the profit and loss account. The contentions raised by the Ld. AR that the assessee has utilized funds from the internal accruals for the purpose of business and the assessee has own/ surplus funds more than the borrowed funds and substantial material was filed before the revenue authorities and demonstrated the submissions made before the appellate authorities at 5.1 of the CIT(A)order. The Ld. AR has highlighted the bank statements in respect substantial balances in the bank account at page 29 to 36 of the paper book. The Ld.AR relied on the judicial decisions in support of surplus funds availability and the

investments/ funding is considered out of surplus funds. Accordingly, the action of the AO in making disallowance of interest is not tenable and we set aside the order of the CIT(A) on this disputed issue and allow this grounds of appeal in favour of the assessee.

7. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 17.08.2023.

Sd/-

(DR DIPAK P RIPOTE)

ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)

JUDICIAL MEMBER

Jodhpur Dated 17.08.2023

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. Concerned CIT
5. DR, ITAT, Jodhpur
6. Guard file.

//True Copy//

आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Jodhpur