

**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. 132/Asr/2022
Assessment Year: 2016-17**

Guru Nanak Milk Products, vill. Mallanwala, Ferozpur Cantt. [PAN:-AABFG1005G] (Appellant)	Vs.	DCIT, Central Circle-1, Jalandhar. (Respondent)
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Appellant by	None (Written submission)
Respondent by	Sh.Ravinder Mittal, Sr. DR.

Date of Hearing	03.11.2023
Date of Pronouncement	09.11.2023

ORDER

Per: Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income (Appeals)-5, Ludhiana, (in brevity 'the CIT(A)') order passed u/s 250(6) of the Income-tax Act, 1961 (in brevity the Act) for assessment year 2016-17. The impugned order was emanated from the order of Id. DCIT, Central Circle-1, Jalandhar (in brevity the AO) order passed u/s 143(3) of the Act.

2. The assessee has taken the following grounds:

“1. That the order passed by the Hon’ble CIT (A) dated 26.04.2022 is against the law and facts of the case.

2. That having regard to the facts and circumstances of the case, Hon’ble CIT (A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction and framing the impugned assessment order u/s 153C/143(3) of the Act which is bad in law and against the facts and circumstances of the case and is not sustainable on various legal and factual grounds.

3. That having regard to the facts and circumstances of the case, Hon’ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned assessment order u/s 153C r.w.s. 143(3) of the Act and without complying with the mandatory conditions u/s 153B and 153D as envisaged under the Income Tax Act, 1961.

4. That having regard to the facts and circumstances of the case, Hon’ble CIT (A) has erred in law and on facts in confirming the action of Ld. Assessing Officer in making an addition of Rs. 41,44,372/- on account of disallowed of interest paid on CC account without any basis.

5. That having regard to the facts and circumstances of the case, Hon’ble CIT (A) has erred in law and on facts in

confirming the action of Ld. Assessing Officer in making an addition of Rs. 1,59,20,750/- by rejecting the claim of assessee with respect to the brought forward losses in the return filed in response to notice 153C.

6. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

3. The fact in briefs that the search was conducted in the premises of the assessee u/s 132 and also the survey was conducted u/s 133. The notice u/s 153C was issued. The assessee filed return and claimed the carry forward loss amount to Rs.1,59,20,750/- against the net profit amount to Rs.2,60,02,235/-. The loss was carry forwarded from the earlier assessment years 2012-13 to 2014-15. On verification of the record, the ld. AO found that the loss was duly rejected as those years by the ld. AO on basis of assessment. As per the assessee, the appeal for all the three years were duly filed before the ITAT and the orders were pronounced in the favour of the assessee, bearing **ITA Nos. 583 to 585/Asr/2019 dated 11.08.2022**. So, the said loss is liable to be accepted by the revenue. In case of the assessee claimed interest amount to Rs.82,88,744/- on rent received. The ld.AO found that the assessee is enjoying the cash credit limit and it is noticed that there is no change in the cash credit limit. So, there is no

addition funds are raised. Accordingly, the Id. AO disallowed the 50% of the interest claim which is amount to Rs.41,44,372/-. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) upheld the order of the Id. AO. Being aggrieved assessee filed an appeal before us.

5. The Id. AR filed the written submissions which are kept in the record. It is placed that in case of ground nos. 1, 2 and 3 are not pressed. Only Ground Nos. 4 and 5 are pressed for adjudication.

6. Ground No. 6, this ground is general in nature.

Ground Nos. 4 and 5

7. On perusal of the submission the loss was carry forward from the earlier assessment years. But loss was rejected in impugned assessment year due to the demand raised by the revenue in preceding years where the loss was occurred. In appeal all the years were adjudicated in favour of assessee and loss is eligible to allow in favour of the assessee by the order of the ITAT, Amritsar Bench bearing ITA No. 583 to 585/Asr/2019 date of order 11.08.2022. The relevant paragraph is extracted as below:-

“6.12. Respectful observation of this order which is stated that during processing of return u/s 143(1) there is no application of mind. In this factual interpretation the addition was made u/s

2(22)(e) related to deemed dividend such shares invested by the assessee to the company where he has the substantial interest. This particular investment is reflected in the books of account of the assessee. There is coherent relation in between company and assessee. The counsel of the assessee filed an additional ground which is under adjudication. The ld CIT-DR vehemently opposed & pointed out that assessee had never taken this additional ground anywhere before the any of the lower authorities. The acceptance of additional ground was not in question in Rahul Mittal, supra case. We accept the additional ground in light of judgment of Rahul Mittal, supra, respectfully considering the judgment of Hon'ble Apex Court in the case of NTPC vs. CIT (1998) 229 ITR 383 (SC). The additional ground of the assessee is accepted related assessment U/s 153A of the Act and the appeals of the assesseees are allowed.

7. In the result, In ITA No. 86/Asr/2017, ITA 320 to 326/Asr/2017, 276/Asr/2019 & 277/Asr/2019 ITA 583 to 585/Asr/2019 ITA 151/Asr/2021, ITA 183/Asr/2021 and ITA 41 to 43/Asr/2022 are allowed.”

7.1 It is mentioned in written submission that the assessee is doing the milk product so, the land was required to maintain the life stock and the processing of milk. Therefore, the assessee invested in different land for his business purpose. The ld. AR invited our attention in the written submission. The relevant paragraph is reproduced as below:

“Addition of Rs. 1,59,20,750/-:

Sir, while making disallowance the Ld. Assessing Officer in para 5 at page 6 of the assessment order stated as under

“it was further noticed that the assessee had disclosed net profit of Rs,2,60,02,235/-as per the Audited Profit and Loss Account. Further in the Audited Balance Sheet assessee has disclosed under the head ‘other current assets’ carry forward of losses of Rs.1,59,20,750/-relating to AY 2012-13, 2013-14 and 2014-15. however, in the return of income filed by the assessee, this brought forward losses of Rs. 1,59,20,750/- has been claimed as set off against the gross total income of Rs. 2,60,00,235/-.....”

Sir, it is stated that Ld. AO disallowed losses for the AY 2012-13, AY 2013-14 AY 2014-15 and assessee preferred appeals in those years and the same has been allowed by the Hon’ble ITAT, Amritsar vide order dated 11.08.2022 (relevant page 23 para 7 of the ITAT order, copy of order enclosed) thus it is requested that benefit of carry forward losses may kindly be allowed to assessee as it is legally entitled to all the claim and carry forward losses of earlier years and also Hon’ble ITAT has allowed the appeal of assessee and no addition was sustained and all the claims were accepted.

Sir, it is also submitted that Hon’ble CIT(A) in the Appellate order last page stated that assessee has not taken any such ground of set off of the losses, in this regard it is stated that in AY 2012-13, 2013-14 and AY 2014-15, losses were there for the reason that assessee claimed interest expense as claimed in the current year also and these interest expense were disallowed by the Ld. AO and ground relating to disallowance of interest expense was taken and thereafter entire appeal (including this interest expense ground) were allowed by Hon’ble ITAT, Amritsar. Thus, when the appeal of assessee was allowed that means interest expense were allowed, therefore the losses are automatically allowed to the assessee. Thus

there is no force in the claim of Hon'ble CIT(A), thus losses of all the earlier years i.e. preceding years should be allowed to assessee.

Addition of Rs. 41,44,372/-:

Sir, is submitted that assessee is a firm engaged in the business of purchasing milk, preserving it in its chilling plants and selling the same to large retailers as well as marketing of milk and milk products.

*Sir, it is submitted that Ld. AO further disallowed the interest expense claimed by assessee stating on **page 6 para 4 of the assessment order** that “.....During the course of assessment proceedings u/s 153C of the Act for the past years, it was noticed that major part of the funds were utilised and remained blocked in investment in immovable properties, which were not utilised any time for the business of the assessee and upon advances to entities with which there was no direct or indirect business dealing. The assessee himself has not claimed any interest relating to such advances in the past and kept the same as unexplained interest. Since the assessee was not able to justify the utilisation of funds for the purpose of business, keeping in view the facts that about 60% of the balance in the CC limit remain locked up in unproductive assets and that there were some interest free advances also available with assessee, it is held that 50% of the interest was not allowable as per provision of section 36(1)(iii) of the Act and required to be capitalised with the cost of immovable properties. Therefore an addition of Rs. 41,44,372/- being 50% of the interest claimed is hereby added of total income of the assessee*”

Sir, in this regard it submitted as under:

- 1. That modus operandi of assessee's business model is that to collect milk from farmers, preserve it and then sell the same to large retailers*

and also market milk and milk products and for the purpose of carrying its business assessee needs to have its own dairy from where it can easily reach out to the targeted market as the product involved is perishable in nature. For this assessee purchased various lands exclusively for the purpose of its business which were operational in that very year and very well utilized by the assessee firm for its business.

Thus, with this intention that these immovable assets were utilized for the business purpose assessee disclosed these in its sundry debtors list as this expense incurred were revenue in nature which were utilized for the business purposes.

Sir, it is submitted that a business activity consists of three stages: the first stage relates to the activity necessary for the purpose of acquiring the raw material and establishment of plant and machinery and the second activity comprises the processing and manufacturing by using the raw material and the plants and machinery set up for the purpose and the third category consisted of the marketing thereof. The first in point of time lays the foundation for the second activity and the second activity when completed lays the foundation for the third activity. Therefore, the expenditure incurred for carrying on any of these activities including the first activity is also deductible in computing the profits and gains of the assessee for the relevant year when the activity is undertaken. Thus in the present case also business was very well being carried in this immovable assets and this fact has been accepted by the Ld. AO himself that these immovable assets are productive assets of assessee's business. It is not a case where assets are purchased and kept idle and not utilized for the business, but a case where the immovable assets are very well utilized for the business of assessee firm.

- 2. That all these immovable assets are utilized for the business of the assessee firm in the relevant year.*
- 3. That Ld. AO on the assumption and presumption basis made adhoc disallowance of Rs.41,44,372/- by holding that this additional interest*

on CC limit was required to be capitalized as cost of acquisition of immovable properties, without considering the fact that these were utilized for the business of the assessee firm.

4. *That in the Assessment order and appellate order it is stated that assessee has utilized funds and these funds remained blocked in immovable properties, in this regard it is stated that all the properties of assessee firm is already disclosed in the books of accounts and are very well utilized for the business purpose as per modus operandi explained above. In both the orders it is not clearly stated that which immovable asset is not utilized by the assessee firm and as per assessee firm all the properties are business assets which are fully utilized for the purpose of business only. Thus, disallowance of interest expense should be made in the hands of assessee concern.*

Sir, in this regard reliance is placed on the decision of Supreme Court of India in the case of Vardhman Polytex Ltd. V/s CIT, (2012) 254 CTR (SC) 102 : (2012) 79 DTR (SC) 41 : (2012) 349 ITR 690 (SC) : (2012) 210 Taxman 261 (SC), in which it was held as under: Business expenditure—Interest on borrowed capital—Borrowings for acquisition of capital assets not put to use in the relevant year—Interest paid in respect of borrowings utilised for acquisition of capital assets which were not put to use in the relevant year is allowable as deduction under s. 36(1)(iii)—CIT vs. Vardhman Polytex Ltd. (2008) 214 CTR (P&H)(FB) 561 : (2008) 2 DTR (P&H)(FB) 160 set aside; Dy. CIT vs. Core Health Care Ltd. (2008) 215 CTR (SC) 1 : (2008) 3 DTR (SC) 49 : (2008) 298 ITR 194 (SC) followed

Sir, it is submitted that in the present case assets acquired were utilized exclusively for the business purpose in the relevant year and this fact has been accepted by the Ld. AO that these were productive assets. Thus claim of interest expense may kindly be allowed to assessee and addition made may kindly be deleted.”

8. The Id. DR vehemently argued and fully relied on the order of the revenue authorities. The Id. DR also prayed that the verification should be recalled for the carry forward loss claimed by the assessee.

9. We heard the revenue's submission, peruse the orders of revenue authorities and consider the documents available in the record. Related to **ground no. 4**, the assessee already placed that the activities of the assessee are more requirement of lands for maintaining the livestock, chilling of milk, distribution. All are related to business. Further the opening and closing balance of cash credit limit does not reveal that there is no use of funds of the assessee. The Id.AR relied on the order of Hon'ble Apex Court in the case of **Vardhman Polytex Ltd.v.Commissioner of Income-tax[2012] 25 taxmann.com 281 (SC)**, the relevant paragraphs are reproduced as below:-

"The question which arises for determination in these civil appeals filed by the assessee is as follows:

"Whether interest paid in respect of borrowings for acquisition of capital assets not put to use in the concerned financial year can be permitted as allowable deduction under section 36(1)(iii) of the Income-tax Act, 1961?"

This question has been answered in favour of the assessee in the case of Dy.CIT v. Core Health Care Ltd. [2008] 298ITR 194/167 Taxman 206 (SC). Consequently, the civil appeals filed by the assessee are allowed with no order as to costs.”

We respectfully relied on the order of **Vardhman Polytex Ltd.**(supra). The disallowance of 50% interest has no basis. The use of land purely business purpose. The ld DR was not able to submit any contrary judgment against the assessee. So, the appeal order related this issue is setting aside. We quash the addition amount to Rs. 41,44,372/-.Hence, the ground no. 4 is allowed.

9.1 Considering the above discussion, the earlier years losses are carry forwarded to the impugned assessment year. The order of the ITAT is in favour of assessee related AY 2012-13, 2013-14 & 2014-15. So, the carry forwarded loss is eligible for deduction subject rectification of preceding years. In point of verification and for calculation we remand back the issue to the file of the ld. AO for allowing the carry forwarded loss of the assessee as per the law. Therefore, the **ground 5** is duly remanded back to the file of the ld. AO for verification of the loss claimed by the assessee and the eligible carry forwarded loss should be allowed as per the law. The reasonable opportunity should be allowed to assessee in set aside proceeding.

9.2 Related to the above, the ground nos. 1, 2 and 3 of assessee are not pressed.

9.3. Related to the ground no. 4 of the assessee is allowed.

9.4 Related to the ground no. 5 of the assessee is allowed for statistical purposes.

9.5 Related ground no. 6 of the assessee is general in nature.

10. In the result, the appeal of the assessee bearing **ITA No. 132/Asr/2022** is allowed for statistical purposes.

Order pronounced in the open court on 09.11.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial 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.

True Copy
By order