

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य  
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 1318/Chd/2017  
निर्धारण वर्ष / Assessment Year : 2013-14

Shri Aman Seth Prop. M/s C- Industries E-78, Focal Point, Phase-IV, Ludhiana	बनाम	The ITO Ward- 1(1) Ludhiana
स्थायी लेखा सं. / PAN NO: ACFPS3662P		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Parikshit Aggarwal, C.A  
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr. DR  
सुनवाई की तारीख/Date of Hearing : 11/06/2024  
उद्घोषणा की तारीख/Date of Pronouncement : 21/06/2024

### आदेश/Order

**PER PARESH M. JOSHI, J.M. :**

The present appeal under section 253 is filed by the Assessee who is aggrieved by the order of the Ld. CIT(A)-2, Ludhiana bearing No. 172/ROT/IT/CIT(A)-2/LDH/2016-17 dt. 05/06/2017 under section 250 of the Act.

### Factual Matrix

2. The brief facts of the case are that the assessee filed a return of income of Rs. 10,61,330/- electronically on 23/09/2013. The return filed by the assessee was processed under section 143(1) of the Income Tax Act, 1961 on 07/01/2014. **The case was selected for scrutiny through CASS.** The statutory notice under section 143(2) was issued to the assessee on 02/09/2014 which was duly served upon the assessee on 03/09/2014. The case was received on transfer from Circle-I, Ludhiana. Keeping in view the provisions of section 129 of Income Tax Act, 1961, thereafter notices u/s 142(1) alongwith questionnaire were issued on 09/07/2015 for 27/07/2015 by the undersigned and served upon the assessee on 11/07/2015.

3. In response to said notices Sh. Daljit Puri, Advocate, counsel of the assessee, attended the assessment proceedings from time to time with whom the case was discussed. During the course of assessment proceedings, **audit report** in form No. **3CB** and **3CD** as required under **section 44AB** of the Income Tax Act along with Manufacturing Account/ Profit and Loss account, Balance Sheet etc **was filed**. The information requisitioned as per questionnaire was furnished, placed on record and examined. Books of account were produced and test checked. **The assessee derives income from Trading of Chemicals.**

4. During the course of assessment proceedings, it was noticed that the assessee firm **has paid interest on secured/unsecured loans**. It was further noticed that the assessee has given **huge advance to M/s Ritesh Properties Ltd, M/s Punjab Apparel Park, advance for purchase of Plot, Insu. by Allahabad Bank, flat booking with Jaypee and residential house without charging/receiving any interest**. Accordingly, vide noting dated 24.11.2015, counsel of the **assessee was requested to show-cause as to why interest chargeable** from M/s Ritesh Properties Ltd, M/s Punjab Apparel Park, advance for purchase of Plot, Insu. by Allahabad Bank, flat booking with Jaypee and residential house on advance given **may not be disallowed out of interest paid by the assessee on secured/unsecured loans**. In response to show-cause notice, counsel of the assessee vide noting dated 02.02.2016 and 09.02.2016 **agreed** for a disallowance of proportionate interest u/s 36 (I)(iii) of the Income Tax Act, 1961 **being use for non business purpose**.

5. The Ld. AO in his assessment order dt. 10/02/2015 has observed as under:

3.2 I have considered the submission of the counsel of the assessee. In the case of CIT Vs Abhishek Industries. Ltd. 286 ITR-1 (P&H), the Hon'ble Punjab & Haryana High Court held that: -

*"The theory of direct nexus of the funds between borrowings of the funds and diversion thereof for non-business purposes could not be subscribed to. Rather, there should be nexus of use of borrowed funds for the purpose of business to claim deduction under section 36(I)(iii)."*

Further, in the case of CIT Vs Abhishek Industries Ltd. quoted above, the Hon'ble Punjab & Haryana High Court held that: -

*"Once it is borne out from the records that the assessee had borrowed certain funds on which liability to pay tax is being incurred and on the other hand, certain amounts had been advanced to sister concerns or others without carrying any interest and without any business purpose, the interest to the extent the advance had been made without carrying any interest is to be disallowed u/s 36(1) of Act. Such borrowings to that extent cannot possibly be held for the purpose of business but for supplementing the cash diverted without deriving any benefit out of it. Accordingly, the assessee will not be entitled to claim deduction of interest on the borrowings to the extent those are diverted to sister concerns or other persons without interest."*

The above case law directly applies on the facts of the case.

3.3 Assessee's counsel also referred the judgment of Honorable Supreme Court in the case of Hero Cycles (P) Vs Commissioner of Income Tax Civil appeal no. 514 of 2008(2015) 94 CCH 0097ISCC dated November 5,2015.

The assessee is paying substantial amount of interest on the loans raised. Further the advance given to M/s Ritesh Properties Ltd, M/s Punjab Apparel Park, advance for purchase of Plot, Insu. by Allahabad Bank, flat booking with Jaypee and investment in residential house was not for any business expediency/purpose as is evident from the copy of accounts of these above said concern for the period 01.04.2011 to 31.03.2014. Further, vide noting date 28.01.2016 the assessee asked to provide the date of above said investment/advances and the assessee could not established that there was nexus between expenditure and purpose of business. Had the assessee not given advance to above concern, he might have reduced his liability to pay interest on loans to the extent of interest chargeable on interest free advance given. Keeping in view the judgment of Hon'ble Punjab and Haryana High Court in the case of CIT v/s Abhishek Inds. Ltd, Ludhiana reported at 286 ITR 1 (P&H), the proportionate amount of interest be disallowed from the interest claimed in the profit and loss account being interest chargeable on the interest free loan advanced by the assessee to above concern.

**3.4 Further, the Hon'ble High Court of Punjab and Haryana's judgment in the case CIT Vs Kudu Industries, (2015)62 taxman.com 191 held that for disallowance u/s 36(l)(iii) of the Income Tax Act, 1961 the total fund (i.e owned fund and borrowed funds) is considered for working out the disallowance of interest. The Hon'ble High Court of Punjab and Haryana in the above said case held that " Where mixed funds are diverted towards interest free advances, the disallowance should be made up to the level of the average cost of debt to the assessee. There is no justification in taking into consideration the rate of interest in respect of any particular transaction where under an assessee avails advances on interest. An assessee may avail**

*several advances from the same lender or from different lender and at varying rates of interest. In the absence of anything to indicate that the interest-free advance was made only from a particular corresponding advance received by the assessee, the advance made by the assessee would obviously be from the common pool of money. Money lying in a common pool has no identity. The various amounts advanced to the assessee get merged into a common pool. There is no justification then either for the assessee or for the department to take into consideration rate of interest in respect of a particular advance or advances to the assessee. The only logical approach is to take into consideration the average interest rate at which the assessee has availed of the advances."*

**The ratio of the said judgment is applied and the detail of calculation of average rate of interest is as under:**

<b>Total Interest Cost</b>		<b>30,41,634/-</b>
Bank Interest	-	22,65,913/-
Hire Charges	-	1,65,552/-
Interest to Others	-	7,29,079/-
Less- Interest Received	-	(-) 1,18,910/-
<b>Capital Available (Interest &amp; noninterest bearing)</b>		<b>3,28,01,742/-</b>
Prop. Capital	-	95,02,430/-
Secured Loan	-	1,54,47,488/-
Unsecured Loan	-	78,51,824/-
<b>Average rate of interest</b>		<b>= <math>\frac{30,41,634}{3,28,01,742} \times 100 = 9.27\%</math></b>

Details calculation of interest is as under:-

Sr. No.	Name of the party (M/s /Sh./Smt.)	Opening balance of advance as on 01.04.2012 (Rs.)	Closing balance as on 31.03.2013	Average of advances	Average Interest @ 9.27% per annum (Rs.)
1.	M/s Ritesh Propertie Ltd.	6,00,000/-	18,60,000/-	7,30,000/-	67,671/-
2.	M/s Punjab Apparel Park	6,77,280/-	6,77,280/-	6,77,280/-	62,784/-
3.	Advance for purchase of plot	24,64,125/-	24,64,125/-	24,64,125/-	2,28,424/-
4.	Ins. By Allahba Bank	3,00,000/-	5,00,000/-	4,00,000/-	37,080/-
5.	Falt booking with Jaypee	2,50,000/-	17,23,391/-	9,86,695/-	91,467/-
6.	Residential house	40,35,030/-	40,35,030/-	40,35,030/-	3,74,047/-
Total					8,61,473/-

3.5 Accordingly, interest amounting Rs.8,61,473/- debited in Profit and Loss account is disallowed u/s 36(l)(iii) of the I.T. Act, 1961 being fund used for non business purpose. Accordingly, interest expenses debited in Profit and loss account amounting Rs. 8,61,473/- is disallowed and added back to the income of the assessee

3.6 I am satisfied that assessee has furnished inaccurate particulars of his income of Rs. 8,61,473/-. Penalty proceedings u/s 271(l)(c) are separately initiated along with this order.

4. During the course of assessment proceedings, it was noticed that the assessee has claimed telephone expenses of Rs. 85,552/-, car expenses & repair of Rs. 4,60,693/-, depreciation of Rs. 6,01,657/- on car and depreciation of 21,060/- on telephone, Interest on car loan, 1,65,552/- and Insurance of car 65,498/-. Personal use of car and telephone for non business purposes cannot be ruled out. The counsel of the assessee was requested to 'produce log book in respect of car and details of expenses for personal use of telephone. Counsel of the assessee replied that no doubt, personal use of car and telephone for non business purposes cannot be ruled out but in this regard no separate details have been maintained. After discussion with the counsel of the assessee, 1/6<sup>th</sup> out of these expenses, which, comes to Rs. 2,33,334/- as under, are disallowed for personal use and for non business purposes and added in the income of the assessee:-

<b>Nature of expenses</b>	<b>Amount of expenses claimed (In Rs.)</b>	<b>1/6<sup>th</sup> disallowed for Personal use (In Rs.)</b>
Telephone Expenses	85,552/-	14,258/-
Car repair & Maintenance	4,60,693/-	76,782/-
Depreciation on Car	6,01,657/-	1,00,276/-
* Depreciation of Telephone	21,060/-	3,510/-
Insurance on Car	65,498/-	10,916/-
Interest on Car Loan	1,65,552/-	27,592/-
<b>Total</b>		<b>2,33,334/-</b>

During the course of assessment proceedings, expenses claimed in the profit and loss account were subjected to verification. Relevant vouchers were called for and test checked. During the course of verification the assessee could not produced some vouchers out of petty expenses like diwali expenses, staff labour welfare etc. on the plea that for such petty expenses vouchers can not be obtained and the same have been booked on the basis of self made vouchers. In the absence of vouchers authenticity of expense claimed can not be ascertained. Accordingly, an addition of Rs. 25,000/- is made on account of disallowance out of expenses being unvouched.

6. In view of the above income of the assessee is computed as under:

Income as shown in the return of income Rs. 10,61,330/-

Addition:

- |  |                        |
|--|------------------------|
| i) On account of disallowance of interest u/s 36(1)(iii) as discussed in para 3 above                | Rs. 8,61,473/-         |
| ii) On account of disallowance for personal use of car / telephone etc. as discussed in para 4 above | Rs. 2,33,334/-         |
| iii) On account of unvouched expenses as discussed in para 5   | <u>Rs. 25,000/-</u>    |
| <b>Total Income</b>  | <b>Rs. 11,19,807/-</b> |

Say Rs. 21,81,137/-

Assessed: Issue requisite documents alongwith income tax computation sheet i.e. ITNS 150.

Issue penalty notice u/s 271 (1)(c) of the Income Tax Act, 1961.

6. Being aggrieved by the AO order dt. 10/02/2015 (supra) the assessee preferred an appeal before the Ld. CIT(A) who by an order dt. 05/06/2017 has sustained the additions.

7. The assessee being aggrieved by the aforesaid order of Ld. CIT(A) dt. 05/06/2017 has preferred an appeal before us on following grounds of appeal:

1. That the Learned Commissioner of Income Tax (Appeals)-II, Ludhiana has erred in sustaining the addition of Rs. 8,61,473/- u/s 36(1)(iii) without considering the merits of the case. That the Learned Commissioner of Income Tax (Appeals)-II, Ludhiana has reject the appeal of the assessee on the

ground that the assessment is agreed by the assessee, whereas counsel of the assessee signed the order sheet for his presence in assessment proceedings not for the assessment for this case. Therefore, disallowance of Rs. 8,61,473/- u/s 36 (1)(iii) made by the Learned Assessing Officer and sustained by the Learned Commissioner of Income Tax (Appeals)-II, Ludhiana is illegal, unwarranted and uncalled for and may be deleted.

2. That the Learned Commissioner of Income Tax (Appeals)-II, Ludhiana has erred in sustaining the addition of Rs. 25,000/- on made by the Ld. Assessing Officer on account of expenses being unvouched without pinpointing any defects in the books of accounts/Vouchers produced during the assessment proceedings. Therefore, Addition of Rs. 25,000/- made on account of expenses being unvouched made by the Assessing Officer and sustained by the Ld. Commissioner of Income Tax (Appeals)-II, Ludhiana is illegal, uncalled for, unwarranted and needs to be deleted.

3. That the Learned Commissioner of Income Tax (Appeals)-II, Ludhiana has erred in sustaining the addition made by the Learned Assessing Officer has erred making the 1/6th disallowance of Rs. 2,33,334/- on account of Telephone Expenses, Car Repair & Maintenance, Car Depreciation, Telephone Depreciation, Car Insurance and interest on Car Loan. That the 1/6th disallowance on above expenses is very excessive, whereas these assets mostly used for business purposes. Therefore, 1/6th disallowance of Rs. 2,33,334/- on account of Telephone Expenses, Car Repair & Maintenance, Depreciation on Car, Depreciation on Telephone, Car insurance and Interest on Car Loan made by the Assessing Officer and sustained by the Learned Commissioner of Income Tax (Appeals)-II, Ludhiana is illegal, unwarranted, uncalled for and needs to be deleted.

4. That the appellant craves to leave or to amend the Ground of appeals before or at the time of hearing.

### **Record of Hearing**

8. The hearing before us took place on 11/06/2024 when paper book in two volumes from page 1 to 75 were placed on record.

9. The Ld. AR contended before us that it is absolutely wrong and incorrect on part of lower authorities to reject the appeal of the assessee on the ground that **assessment is agreed by the assessee**, whereas the Counsel of the assessee has simply signed the order sheet marking his presence in the assessment proceedings and it is not for an assessment **to be made on agreed basis**. Therefore disallowance of **Rs. 8,61,473/-** under **section 36(1)(iii)** made by Ld. AO and sustained by the Ld. CIT(A) is illegal, unwarranted and uncalled for and may be deleted. The Ld. AR then vehemently argued the case on merits and interalia contended that addition of Rs. 8,61,473/- on account of disallowance of interest under section 36(1)(iii) is bad in law and

illegal and ought to be deleted as in the books of account assessee has shown advances for different properties. That the Ld. AO has disallowed proportionate interest paid on secured / unsecured loans contending that no interest has been charged on advance paid for properties. The order to the effect that **had the assessee not given advance, he might have reduced his liability to pay interest on loans and so proceeded for disallowance of respective pro-rata interest of Rs. 8,61,473/- u/s 36(1)(iii)**. Hence order of lower authority is defective, null and void besides presumptive in nature. It is not based on actual facts and details is placed on record.

9.1 That the assessee **has enough surplus capital** and had introduced the advances for purchase of properties in books of accounts for purpose of **bank funding**. The assessee was in want of additional funds from his bankers and the bankers had asked him to introduce property in books of accounts to cover the funding by ample collateral.

9.2 That the copy of sample financial statements where advance for properties have been deleted against capital was submitted during course of assessment proceedings and is again being submitted herewith for your kind perusal, having ample residual positive capital of Rs.5622523/- which clearly evinces that the capital, reserves and surplus **are far more than** the advances and the advances for properties had been **given out of own capital only**.

9.3 That the year wise investment made by the assessee as compared to his capital in balance sheet is very less. That the chart showing the investment made by the assessee and capital of the assessee is as under:

Details of Year Wise Investment made in Assets out of Capital		
Financial Year	Investment made in assets (in Rs.)	Capital Balance shown in Balance Sheet as on 31 <sup>st</sup> March on Every year (in Rs.)
2004-2005	1,50,000/-	11,62,824.09/-
2005-2006	84,375/-	29,29,158.26/-
2006-2007	1,50,000/-	29,64,949.19/-
2009-2010	24,64,125/-	48,66,941.67/-
2011-2012	8,50,000/-	50,29,613.36/-
2012-2013	27,33,391/-	95,02,430.85/-

From the above chart it is very much evident that the investments made in assets have been made out of profits and out of the capital of the firm. So no disallowance is required to be made u/s 36(1) (iii) of the Income Tax Act, 1961

9.4 The assessee had placed reliance on landmark decision by the Hon'ble Supreme Court of India in the case of Hero Cycles (P) Ltd. vs. CIT civil appeal no.514 of 2008 (2015) CCH0097ISCC dated 05/11/2015 wherein it has been held as under:

**Remarkably, as observed by the CIT(A) in his order, the company had reserve/surplus to the tune of almost of Rs. 15 crores and, therefore, the assessee company could in any case, utilize those funds for giving advance to its directors.**

Also, it was held in following case laws:

**ACIT vs. Omax Bikes Ltd. (2016) 156 ITD 566 (Chd. Trib.)**

Interest on borrowed capital - sufficient interest free funds - presumption is advances were from interest free funds- no disallowance can be made.

**DCIT vs. Sindhu Realtors Pvt. Ltd. (2016) 45 ITR 448 (Delhi Trib.)**

Interest on borrowed capital - no disallowance in case there are sufficient shareholder's without interest burden and borrowing had been used for the purpose of business only.

The company had interest free advances from its directors/shareholders and the members of their families amounting to Rs. 315.11 lakhs as against the interest free advances made by the company aggregating to Rs. 219.72 lakhs as on March 31,2008, in view thereof, it was rightly inferred that the respondent/assessee had enough interest free funds which would cover the advances also made interest free. **C.I.T. Vs. Kapsons Associates**

Assessee paid interest on loan borrowed. Assessee advanced interest free loan to group concerns to the tune of Rs. 7.37 crores. Assessee has capital of

Rs. 11.78 crores and also have interest free loan from his wife to the tune of rs. 1.18 crores. So assessee has his own funds to advance interest free loan. So interest paid by assessee on borrowed loan cannot be disallowed. **C.I.T. Vs. Smt. Satish Bala Malhotra (No. 1) - (HC-P&H)**

Therefore, the addition of Rs.861473/- made by the Id. assessing officer u/s 36(1)(iii) is illegal, unwarranted, uncalled for and needs to be deleted.

9.5 Reliance was placed on order in ITA No. 189/Chd/2017 in case of Smt. Jagit Kaur Chawla Vs. DCIT Circle-6(1) Mohali of ITAT Chandigarh benches wherein it was held as under:

9. We have heard the rival contentions and perused the orders of authorities below. The issue before us relates to disallowance of interest expenses u/s 36(1)(iii) of the Act. The Ld.CIT(A), we find, has not adjudicated the issue on merits but has upheld the disallowance for the reason that the assessee had agreed to the disallowance during assessment proceedings and, therefore, he was not entitled to appeal against the same and also for the reason that the assessee had taken up the new plea/explanation before him as to why the disallowance ought not to be made supplemented with documentary evidences which were additional evidences and no prayer was made for admission of the same as prescribed by Rule 46A of the Act.

10. We are not in agreement with the Ld.CIT(A) on both the counts. The Act allows the remedy of appeal if the assessee is aggrieved by an order passed. Though on the face of it, there can be no grievance in case of an agreed addition, but if the assessee is able to demonstrate that the agreement was made under some mistaken belief/ignorance of law, the assessee then can very well be said to be aggrieved by the addition so made. After all the entire exercise of assessment and appeal is aimed at determining the true and correct income which is liable to tax as per the provisions of the Income Tax Act and no addition/disallowance can be made/upheld, merely because the same was agreed to by the assessee in ignorance of the law. An assessee can, in appeal, very well retract its agreement made by explaining that it was recorded under a mistaken belief of law.

11. The case laws referred to by the Ld.CIT(A) do not support his contention that no appeal lies against agreed addition. In fact most of the decisions have been rendered in a different context relating to retraction of an admission during assessment proceedings or questioning a settlement agreement entered into with the government, but in all the case laws the courts have unanimously held that though admission is the best piece of evidence, it is not conclusive and an assessee can retract the same by showing that it was incorrectly made.

12. In the facts of the present case, we find that before the A.O. the assessee had offered no plausible explanation as to why the disallowance of interest expenses u/s 36(1)(iii) of the Act be not made but before the Ld.CIT(A) he pleaded that the same be allowed in view of the proposition of law laid down by various High Courts including the Apex Court and the jurisdictional High Court, that where sufficient own interest free funds are available, no disallowance u/s 36(1)(iii) can be made. The assessee also showed from her financial statements that there were sufficient own funds available in the form of own capital of the proprietor for making the interest free advances. Undoubtedly, the assessee had demonstrated that its admission was wrongly made as per law and facts also. Therefore, we hold, that the Ld.CIT(A) ought to have considered the same on merits and his action of holding that no appeal lay against the agreed disallowance is therefore set aside.

13. Moreover, we do not agree with the Ld.CIT(A) that the contention raised was not admissible since it was a new ground and additional evidences were filed which were not accompanied by an application for admitting the same as prescribed by the Income Tax rules under Rule 46A in this regard. In fact we find that the assessee had raised a contention based on proposition of law laid down by courts ,which it was entitled to raise in appeal. Also the financial statements showing the availability of sufficient own funds was already available on record having been filed during assessment proceedings itself. The documents referred to by the assessee for establishing the fact of availability of sufficient own funds were not additional evidences at all, therefore, and thus, we hold that the Ld.CIT(A) was wrong in stating that they were additional evidences and, therefore, refusing to admit them since no prayer for admission of the same was filed by the assessee.

14. Now coming to the merits of the case, we are in agreement with the contention of the Ld.Counsel for the assessee that it is settled law that where sufficient own interest free funds are available, no disallowance u/s 36(1)(iii) of the Act can be made. The Hon'ble Apex Court in a recent decision in the case of CIT vs Reliance Industries Ltd. in Civil Appeal no.10 of 2019 dated 02.1.2019 has held that the presumption in such a case is that own funds have been used for making the advances, calling for no disallowance of interest u/s 36(1)(iii) of the Act. The question of law before the Hon'ble Court was :

"1. Whether the High Court is correct in holding that interest amount being interest referable to funds given to subsidiaries is allowable as deduction under Section 36(1)(iii) of the Income Tax Act, 1961 (for short 'the Act') when the interest would not have been payable to banks, if funds were not provided to subsidiaries; "

The relevant findings of the Hon'ble High Court in respect to the same are as under:

"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. 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."

15. The assessee has also placed the relevant facts before us reflecting the same from its financial statement. Since the said facts need to be verified, **we consider it fit to restore the issue back to the CIT(A) to consider the submissions of the assessee and after verification of the facts adjudicate the same in accordance with law.**

**(emphasis supplied by us)**

10. The Ld. DR supported the orders of lower authorities i.e; Ld. AO and CIT(A). the Ld. DR contended that before Ld. AO there is clear finding " **In response to the show cause notice, counsel for the assessee vide noting dt. 02/02/2016 and 09/02/2016 agreed for a disallowance of proportionate interest under section 36 (1)(iii) of the Income Tax Act, 1961 being use for non business purpose.**" The said finding of Ld. AO is sustained by CIT(A) too. Now it is not open for Ld. AR to turn around and **contend otherwise**. In any event even on merits the assertion of Ld. AR is required to be tested in original proceedings or before CIT(A). It was finally contended that CIT(A) order be sustained.

11. Both the Ld. AR and Ld. DR save and except disallowance of interest of Rs. 8,61,473/- have not placed much emphasis on other disallowances of Rs. 2,33,334/- and Rs. 25,000/-.

The amount of Rs. 2,33,334/- is on account of telephone expenses of Rs. 85,552/- , car expenses and its maintenance of Rs. 4,60,693/- depreciation of Rs. 6,01,657/- on car, interest on car loan of Rs. 1,65,552/- and insurance of car of Rs. 65,498/-.

The amount of Rs. 25,000/- is on account of unvouched expenses which are petty cash expenses like Diwali expense, staff welfare expense etc.

### **Finding & Conclusions**

12. In the foregoing we hold that Ld. AO and Ld. CIT(A) ought not to have decided the case on **agreed basis**. In Income Tax Law both assessee and counsel are in panic mode particularly so when an assessee is an individual. Full & complete opportunity should be given to such assessee to establish their case on merits. Seldom they should go by leeways given by Counsel. **Any agreed addition should be expressly recorded in the presence of the assessee after admonishing them that they are not bound to do so.**

As far as possible in individual cases care and caution approach is required. The tax payers interest is paramount simultaneously Revenue has to augment resources for nation building.

13. In view of the peculiar facts and circumstances of the case keeping in mind that detailed verification is required of accounts and documents in support thereof to adjudge and adjudicate the case on merits on all issues rather than on agreed basis.

14. We therefore deem fit and proper to set aside the impugned order of Ld. CIT(A) following above decision (supra) with directions to verify the accounts and documents in support thereof in respect of all above disallowances / additions (supra). The Ld. CIT(A) is directed to pass a fresh

order on **merits** on denovo basis by giving full and complete opportunity to the assessee herein.

### Order

15. Accordingly impugned order of CIT(A) dt. 05/06/2017 is set aside as and by way of remand.

16. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 21/06/2024.

Sd/-

विक्रम सिंह यादव  
( VIKRAM SINGH YADAV)  
लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-

परेश म. जोशी  
(PARESH M. JOSHI)  
न्यायिक सदस्य / JUDICIAL MEMBER

AG

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar