

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "A" BENCH: NEW DELHI**

**BEFORE SHRI G.S.PANNU, VICE PRESIDENT &
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.1839/Del/2017
[Assessment Year : 2012-13]**

Abhitex International, Plot No.3-4, Paliwal Nagar, G.T.Road, Panipat. PAN-AACFA2394P	vs	DCIT, Panipat Circle, Panipat.
APPELLANT		RESPONDENT
Appellant by	Shri S K Goel, Adv.	
Respondent by	Ms. Alka Gautam, Sr.DR & Shri Kanv Bali, Sr. DR	
Date of Hearing	24.07.2024	
Date of Pronouncement	26.07.2024	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee for the assessment year 2012-13 is directed against the order of learned CIT(A), Karnal dated 17.02.2017. The assessee has raised following grounds of appeal:-

- 1) *“That the order of the learned Commissioner of Income Tax(Appeals) is against law and facts.*
- 2) *That in the facts and circumstances of the case of the appellant, the order of the learned Commissioner of Income Tax(Appeals) in confirming disallowance of interest of Rs.797540/- u/s 36(1)(iii) in respect of investment in building under construction is altogether arbitrary, illegal, void and uncalled for.*
- 3) *That the order of the learned Commissioner of Income Tax(Appeals) in confirming disallowance of interest of Rs.1379958/- in respect of advance paid for purchase of plot which was paid out of capital of partners on which no interest is being paid is highly arbitrary, illegal, void and uncalled for.*
- 4) *That the order of the learned Commissioner of Income Tax(Appeals) in confirming disallowance out of Telephone expenses, travelling*

expenses and car depreciation @ 5% of total expenses under the said Heads of excessive, arbitrary, illegal, void and uncalled for.

- 5) *That the order of the learned Commissioner of Income Tax(Appeals) in confirming disallowance out of staff labour welfare expenses and miscellaneous expenses @ 5% of expenses under the said Heads of expenses is altogether arbitrary, illegal, void and uncalled for.”*

Facts-

2. The assessee is a partnership firm, engaged in the business of manufacturing and export of handloom/powerloom goods etc. The assessee filed its return of income at INR 5,90,18,503/-. Thereafter, the case was taken up for scrutiny assessment and the assessment u/s 143(3) of the Income Tax Act, 1961 (“the Act”) was framed vide order dated 13.08.2014. The Assessing Officer (“AO”) while making assessment made addition(s) in respect of disallowance of interest expenses u/s 36(i)(iii) of the Act of INR 27,02,358/- and INR 7,97,540/- respectively. Further, the AO made disallowance in respect of employees contribution of ESIC that was not deposited within due date, interest on TDS and other adhoc disallowance 1/10th out of telephone and car maintenance expenses, staff and labour expenses and out of miscellaneous expenses.

3. Aggrieved against this, the assessee carried the matter before Ld.CIT(A) who partly allowed the appeal. Thereby, he deleted a sum of INR 13,22,400/- out of interest expenses and rest of additions on this issue was sustained. However, out of other adhoc disallowance, Ld.CIT(A) restricted the addition to the extent of 5% of such expense. Thus, he allowed partly appeal of the assessee.

4. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

5. **Ground No.1** is general in nature, needs no separate adjudication.

6. **Ground No.2** is against the confirming the disallowance of Rs.7,97,540/- in respect of investment made in building under construction. Ld. Counsel for the assessee submitted that Ld.CIT(A) has taken a different stand in this year as similar issue arose in the Assessment Year 2010-11 wherein Ld.CIT(A) had deleted the addition. He submitted that Ld.CIT(A) failed to appreciate the fact that investment was made out of interest free funds available with the assessee therefore, no disallowance was called for. He prayed for deletion of same.

7. On the contrary, Ld. Sr. DR opposed these submissions and supported the order of Ld.CIT(A) and submitted that every year is an independent year. Ld. Sr. DR further submitted that principle of *res-judicata* do not apply on the taxing statutes. He strongly relied on the orders of authorities below.

8. We have heard the rival contentions and perused the material available on record. There is no dispute that in Assessment Year 2010-11, Ld.CIT(A) had deleted the addition. In the present year, the facts are identical and authorizes below have not stated any reason as to why the reasoning of Ld.CIT(A) in Assessment Year 2010-11 is erroneous and coupled with the fact that the authorities below have also not rebutted the submissions of the assessee that the investments were made out of interest free funds available with it and no interest bearing fund was used. Merely, stating that the assessee could not prove the nexus between the incurrence of expenditure and the interest free

funds would not be sufficient. If the assessee has mixed funds of interest free and interest free in that event, it can be inferred that the assessee has made investment out of interest free own funds unless contrary is established by the AO. Moreover, no basis is given for applying ratio at 60% to all bank borrowings. Therefore, the finding of lower authorities is hereby set aside and the AO is directed to delete the addition. Hence, Ground No.2 of assessee's appeal is allowed.

9. **Ground No.3** raised by the assessee is against the sustenance of disallowance of interest expenditure amounting to Rs.13,79,958/- in respect of advance paid for purchase of plot.

10. Ld. Counsel for the assessee submitted that the disallowance of interest in respect of investment made for advances towards residential plots is highly arbitrary and contrary to the records. Ld. Counsel for the assessee further submitted that the authorities below failed to appreciate the fact that investment was made out of the partner's capital for which no interest was being paid. He contended that the authorities below failed to appreciate the facts in right perspective and ignored the ratio laid down by various judicial pronouncements.

11. Per contra, Ld. Sr. DR opposed these submissions and submitted that there is not dispute with regard to the fact that investment was made for the purchase of plot. It was stated that the advances are made against supplies. Therefore, the AO was justified in making the disallowance. He submitted that it was incumbent upon the assessee to prove that advances were not out of the interest bearing funds.

12. We have heard the rival contentions and perused the material available on records. We find that Ld.CIT(A) has decided this issue by observing as under:-

5.3. “Findings:-

After going through the facts and submissions, it is observed that on this issue also, in view of the decision of Hero Cycles (215) (S.C.) and Munjal Sales Corporation vs CIT (2008) 298 ITR 298 (SC), the appellant has not able to discharge its onus to establish that interest free funds has been utilized for making these advances. Similarly, also keeping in view the amendment in the Income Tax Act regarding utilization of interest for assets which have not been brought to use during the year, it is clear that this claim made u/s 36(1)(iii) cannot be allowed to the assessee since the plot had also not been put to use during the year.

Further, with regard to reliance placed upon the decision of CIT(A), Rohtak for earlier years, the same have been discussed while considering Ground No. 3 above and also in the appellate order for A.Y. 2011-12. Accordingly, I am inclined to follow my findings on similar issue for earlier year and therefore the addition made by the AO is upheld. This ground of the appellant is dismissed.”

13. From the above finding of Ld. CIT(A), it is clear that he did not advert to the submission of the assessee that the advances was made out of interest free funds available with the assessee. Thus, it was not a case of diversion of interest bearing funds for non-business purpose. In our considered view without rebutting the claim of the assessee that the investment was made out of the interest free funds available with the assessee, the impugned addition cannot be sustained. The AO is hereby directed to delete the addition. Ground No.3 raised by the assessee is thus, allowed.

14. **Ground No.4** raised by the assessee is against the confirming the disallowance in respect of telephone expenses, travelling expenses, car expenses @ 5% and **Ground No.5** raised by the assessee is in respect of disallowance of staff and labour welfare expenses and miscellaneous expenses @ 5%.

15. Ld. Counsel for the assessee submitted that both these disallowances were made in adhoc manner without bringing any specific instance stating that the expenditure was not verifiable. In the absence of specific finding, the adhoc addition is unjustified.

16. Per contra, Ld. Sr. DR opposed these submissions and supported the assessment order.

17. We have heard the rival contentions and perused the material available on record. We find that the AO has not brought out any specific instance demonstrating that the expenditure claimed by the assessee was not verifiable and was not supported by the evidences. Further, he has not given any basis for adopting the disallowance @ 10% of total expenditure. In the absence of such finding, we find merit into the contention of the Ld. Counsel for the assessee that the adhoc disallowance cannot be sustained. We, therefore, direct the AO to delete the disallowance. Ground of appeal Nos. 4 & 5 are thus, allowed.

18. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 26th July, 2024.

Sd/-

(G.S.PANNU)
VICE PRESIDENT

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI