IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C': NEW DELHI

BEFORE H.S SIDHU, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER

ITA No. 5179/Del/2013
Assessment Year: 2010-11

M/s. Haldiram Manufacturing Co. Pvt. Ltd., B-1/H-3, Mohan Co-operative Indl. Estate, Main Mathura Road, New Delhi. (PAN: AAACH3170K)	Vs.	Addl. Commissioner of Income Tax, Range 12, New Delhi
(Appellant)		(Respondent)

And

ITA No. 6071/Del/2013
Assessment Year: 2010-11

Deputy Commissioner of Income Tax, Circle-12(1), New Delhi	Vs.	M/s. Haldiram Manufacturing Co. Pvt. Ltd., B-1/H-3, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi. (PAN: AAACH3170K)
(Appellant)		(Respondent)

Assessee by	Ms. Rashmi Chopra, Sh. Ruchesh Sinha & Ms. Asiya, Advocates
Department by	Sh. T. Vasanthan, Sr. DR

Date of hearing	16.12.2015
Date of pronouncement	20.01.2016

ORDER

PER O.P. KANT, A.M.:

These cross appeals filed by the assessee and the Revenue are directed against the order dated 08.08.2013 passed for the assessment year 2010-11.

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2. The assessee raised following grounds of appeal in the appeal:

1) *The assessment made by the Commissioner of Income Tax(Appeals) is bad in law and on the facts of the case.*
2) *That having regard to the material on record and the detailed submission made, the learned Commissioner of Income Tax(Appeals) has erred in law and on facts in sustaining disallowance of Rs. 3,245,221/- out of total disallowance of Rs. 11,51,149/- made by the Assessing Officer on account of Interest Expenditure.*
3) *That having regard to the material on record and the detailed submission made, the learned Commissioner of Income Tax(Appeals) has erred in law and on facts in sustaining disallowance of Rs. 2,76,012/- out of total disallowance of Rs. 7,06,342/- made by the Assessing Officer on account of Repairs & Maintenance Expenditure of Plant & Machinery.*

It is prayed that the addition or Rs. 3,24,221/- on account of interest Expenditure and Rs. 2,76,012/- on account of Repairs & Maintenance Expenditure be deleted and appeal be allowed.

3. The facts in brief are that in the previous year relevant to the assessment year, the assessee company was engaged in the business of manufacturing and marketing of various food products and namkeens. The assessee company filed its return of income for the assessment year under consideration on 24.09.2010 declaring total income of Rs. 50,54,47,980/-. The case was selected for scrutiny and notice u/s 143(2) of the Income-tax Act, 1961 (for short ñthe Actò) was issued. The assessment was completed at the assessed income of Rs. 54,85,88,458. Aggrieved with the additions made by the Assessing Officer, the assessee filed an appeal before the learned Commissioner of Income Tax(Appeals) who sustained part of the additions made by the learned Assessing Officer. Aggrieved, the assessee as well as the Revenue is before.

4. Ground no. 1 of the appeal is general in nature, hence, not required to adjudicate upon.

5. As regard to ground no. 2 qua sustaining of disallowance of Rs. 3,24,221/- out of the disallowance of Rs. 11,51,149/- on account of interest expenditure, the learned Authorized Representative submitted that the contention of the assessee in respect of interest free fund advanced to sister concern was already accepted by the learned Commissioner of Income Tax(Appeals), however, he computed interest of Rs. 3,24,221/- towards donation of Rs. 4,41,34,662/- given by the assessee to eligible institutions/societies. Learned Authorized Representative further submitted that the donation has been paid out of the current yearôs profit and not out of the borrowed funds and, therefore, no interest can be disallowed out of the interest paid on the funds borrowed by the assessee during the year.

6. On the other hand, the learned Departmental Representative relied on the order of the Assessing Officer and submitted that the assessee failed to establish direct nexus of the borrowed funds and the funds utilized towards donations.

7. We have heard the rival submissions and perused the material on record. According to order of the ld CIT(A), during the year, the assessee borrowed total fund of Rs. 31,89,85,010/- (as on 31.03.2009) and out of which, only an amount of Rs. 11.96 crores was used for the purpose of working capital loan and the balance amount of Rs. 19.61 crores and 32.82 lakhs were used towards housing loan and cash vehicle loan respectively. Learned Commissioner of Income Tax (Appeals) has further stated that the assessee company owned current funds

aggregating Rs. 134.45 crores as on 2009 as compared to Rs. 104.68 crores as on 31.03.2009. Learned Commissioner of Income Tax (Appeals) has already accepted the contention of the assessee that no disallowance out of the interest paid on borrowed funds towards interest free loan of Rs. 28.11 crores extended to sister concern M/s Haldiram Snacks (P) Ltd was required. However, the learned Commissioner of Income Tax (Appeals), in para 6.7.2 of his order, computed interest liability of Rs. 3,24,221/- towards donations of Rs. 4,41,34,662/- by the assessee company and upheld the same. The donations under Section 80G of the Act are allowed if incurred out of the current year's profit, as we have seen that the profit of the current year is more than Rs. 50 crores in the case of the assessee, in our view, the disallowance for the interest expenses towards donation on proportionate basis out of the interest on borrowed funds, is not justified. Accordingly, this ground of the assessee is allowed.

8. In respect of ground no. 3 of the assessee qua sustaining of disallowance of Rs. 2,76,012/- out of the total disallowance of Rs. 7,06,342/- on account of repairs and maintenance expenditure of plant and machinery, the learned Authorized Representative fairly submitted that if corresponding depreciation is allowed on the disallowance of Rs. 2,76,012/- held as capital expenditure, assessee would not press in respect of this ground.

8.1 The learned Sr. Departmental Representative though relied on the order of the lower authorities, however, could not state anything in support.

8.2 We have heard the rival submissions and perused the material on record. It is seen from the order of the Assessing Officer that the disallowance of Rs. 2,60,012/- was in respect of purchase of UPS which was held by the assessee as a revenue expenditure. However, the learned Commissioner of Income Tax(Appeals) in para 6.9 of his order has held that the said expenditure was capital in nature. He has also further directed the Assessing Officer to allow the depreciation thereon at the applicable rates. In our view, the direction of the learned Commissioner of Income Tax(Appeals) on the issue in dispute are well reasoned and no interference is required by us.

8.3 In view of the above, we do not find any infirmity in the finding of the learned Commissioner of Income Tax (Appeals) on the issue in dispute. Accordingly, this ground is dismissed.

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

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10. Learned Authorized Representative submitted that this appeal should be dismissed as the tax effect involved in this appeal is less than Rs. 10 lacs.

11. Learned Sr. DR considering the grounds and the additions at stake for the Revenue on query fairly submitted that in terms of the CBDT Circular No.21/2015 dated 10th December 2015, the departmental appeal may be treated as not pressed.

12. It may not be out of place to refer to section 268A of the Income-tax Act, 1961 which has been inserted by the Finance Act, 2008 with retrospective effect

from 01.04.1999 which mandates the CBDT to issue notifications and circulars as Circular No.21/2015 dated 10th December, 2015 of CBDT, which has revised the monetary limit for filing of the departmental appeal to the ITAT at Rs.10 lac has been issued under the said provisions by the CBDT. The relevant provision reads as under:-

> *"268A. (1) The Board may, from time to time, issue orders, instructions or directions to other income-tax authorities, fixing such monetary limits as it may deem fit, for the purpose of regulating filing of appeal or application for reference by any income-tax authority under the provisions of this Chapter.*
> *(2) Where, in pursuance of the orders, instructions or directions issued under sub-section (1), an income-tax authority has not filed any appeal or application for reference on any issue in the case of an assessee for any assessment year, it shall not preclude such authority from filing an appeal or application for reference on the same issue in the case of—*
> *(a) the same assessee for any other assessment year; or*
> *(b) any other assessee for the same or any other assessment year.*
> *(3) Notwithstanding that no appeal or application for reference has been filed by an income-tax authority pursuant to the orders or instructions or directions issued under sub-section (1), it shall not be lawful for an assessee, being a party in any appeal or reference, to contend that the income-tax authority has acquiesced in the decision on the disputed issue by not filing an appeal or application for reference in any case.*
> *(4) The Appellate Tribunal or Court, hearing such appeal or reference, shall have regard to the orders, instructions or directions issued under sub-section (1) and the circumstances under which such appeal or application for reference was filed or not filed in respect of any case.*
> *(5) Every order, instruction or direction which has been issued by the Board fixing monetary limits for filing an appeal or application for reference shall be deemed to have been issued under sub-section (1) and the provisions of sub-sections (2), (3) and (4) shall apply accordingly.]"*

13. Relevant extracts (paras 1 to 4) from the aforesaid CBDT Circular No. 21 of 2015 dated 10.12.2015 is also reproduced hereunder for ready reference:

> *"Subject : Revision of monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal and High Courts*

and SLP before Supreme Court – measures for reducing litigation – Reg.

Reference is invited to Board's instruction No 5/2014 dated 10.07.2014 wherein monetary limits and other conditions for filing departmental appeals (in Income-tax matters) before Appellate Tribunal and High Courts and SLP before the Supreme Court were specified.

2. In supersession of the above instruction, it has been decided by the Board that departmental appeals may be filed on merits before Appellate Tribunal and High Courts and SLP before the Supreme Court keeping in view the monetary limits and conditions specified below.

3. Henceforth, appeals/ SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:

S. No	*Appeals in Income-tax matter*	*Monetary Limit (in Rs)*
1	*Before Appellate Tribunal*	*10,00,000/-*
2	*Before High Court*	*20,00,000/-*
3	*Before Supreme Court*	*25,00,000/-*

It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided on merits of the case.

4. For this purpose, "tax effect" means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed (hereinafter referred to as "disputed issues"). However the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against."

14. We have seen that the monetary limits have been made applicable retrospectively by the CBDT in the said Circular as would be evident from the following extract:-

"10. This instruction will apply retrospectively to pending appeals and appeals to be filed henceforth in High Courts/ Tribunals. Pending appeals below the specified tax limits in para 3 above may be withdrawn/ not pressed. Appeals before the Supreme Court will be governed by the instructions on this subject, operative at the time when such appeal was filed."

15. In view of the above where the tax effect is admittedly below Rs.10 lac, the appeal filed is dismissed as the said circular is binding on the Revenue.

Relying on the aforesaid Circular the departmental appeal, in the light of the submissions of the parties before the Bench, is dismissed.

16. In the result, the appeal filed by the assessee is partly allowed and the appeal filed by the Revenue is dismissed.

The decision is pronounced in the open court on 20th January, 2016.

Sd/-	Sd/-
(H.S. SIDHU)	**(O.P. KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 20th January, 2016.
RK/-
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi