

आयकर अपीलीय अधिकरण ,इन्दौर न्यायपीठ ,इन्दौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
श्री डी.टी.गरासिया ,न्यायिक सदस्य

तथा

श्री ओ.पी.मीना ,लेखा सदस्य के समक्ष

BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER
AND
SHRI O.P. MEENA, ACCOUNTANT MEMBER

आ.अ.सं /I.T.A. No.461/Ind/2015		
निर्धारण वर्ष/ Assessment Year:2011-12		
ACIT 2(1) Ujjain	vs.	Jaswinder Singh Oberoi 97 Sharda Bhawan, Vidyanagar Ujjain
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent
स्था.ले.सं./PAN:AAIPO 7177J		
अपीलार्थी की ओर से/Appellant by		Shri Satyapal Singh Meena JCIT
प्रत्यर्थी की ओर से/Respondent by		Shri S.S. Deshpande, CA
सुनवाई की तारीख/Date of hearing		09.01.2017
उद्घोषणा की तारीख/Date of pronouncement		17.01.2017

आदेश /O R D E R

PER O.P. MEENA, ACCOUTANT MEMEBR.

1. This appeal is filed by the Revenue against the order of ld. Commissioner of Income tax (Appeals)-Ujjain [hereinafter referred to as the CIT (A)] dated 23.03.2015. This appeal pertains to Assessment Year 20011-12 as against appeal decided in respect of assessment order dated 20.03.2014 passed u/s. 143(3) of Income Tax Act, 1961(herein after referred to as "the Act) by the ACIT 2(1), Ujjain Indore [hereinafter referred to as the AO]. The Revenue has taken following grounds of appeal:-

On the facts and in the circumstances of the case, the Ld. CIT (A) erred in:

(i) deleting the addition of Rs. 1,26,13,496/- made us 40A(3) of Income Tax Act,1961 without appreciating that there was no material brought on record by the assessee to show that such payments were covered under rule 6DD(b).

(ii) without any evidence to show that as per rule 6DD(b) the government had framed rules for making such payments in cash.

(iii) without evidence to show that this payment was to government.

(vi) Deleting the disallowance of interest of Rs. 20, 30,818/- even when AO had established direct nexus that interest bearing loans and funds were utilized for non-business investment /use.

2. Ground No. (i) To (iii) pertained to deletion of disallowance under section 40A (3), hence, these are being considered as below.
3. Succinctly, facts as culled out from the orders of lower authorities are that the assessee is individual and liquor contractor filed return of income on 27.09.2011 declaring total income of Rs. 70,36,460/- which was assessed at Rs. 2,67,53,240/- by making disallowances and addition. The assessee has made payments of Rs. 1, 39,60,280/- to various country liquor warehouses which are authorized agents of the government for delivering country liquor. Out of this , an amount of Rs. 1,26,13.496/- was disallowed under section 40A(3) of the Act by the AO on the ground that in reply to notice under section 133(6), the Great Gallon Ltd. on behalf of the country liquor warehouses of Indore , Banganga, Mhow and Ujjain submitted that as per the modus operandi of the business the company did not use to maintain the individual account of debtors up to financial year 2010-11, hence, they are unable to provide the ledger accounts and any payments of details before financial year 2011-12. The assessee was also failed to produce receipts

issued by liquor warehouses against the payments made to liquor warehouses. The AO also observed that the assessee used to adopt modus operandi by debiting the respective warehouses account by cash less than Rs. 20,000/- in cash book so that transaction is not hit by provisions of section 40A(3) of the Act. No individual ledger account of individual party is maintained. Therefore, the AO concluded that all the payments were made more than Rs. 20,000/- but shown less than Rs. 20,000/- hence, the assessee has deliberately to avoided to fall under the mischief of the provision under section 40A(3) of the Act. Accordingly the AO disallowed the sum of Rs.1,26,13,496/- under section 40A(3) of the Act.

4. Being, aggrieved the assessee filed an appeal before the Id. CIT (A). It was claimed that the liquor contractor has to take delivery from warehouses, which are authorized agents from government. While taking delivery the liquor contractor is, require to pay sealing and bardana charges (empty bottles) to these warehouses before taking the delivery. These charges are fixed by the government and which compulsory required to be paid by the assessee. Therefore, such payments amounts to payments to government which is exempt under rule 6DD (b) of Income-Tax Rules, 1962. The assessee has relied in the case of *"M/s. Amrai Pachwai & C. S. Shops vs. DCIT circle 1 Durgapur in I.T.A. No. 1251/Kol/2011 A.Y. 2008-09 wherein it was held that "in the circumstances we are of the opinion that payment made by the assessee for the purchase of country liquor and country spirit from the territorial licensee bottling plant , IFB Agro Industries Ltd. , City Center is protected by exemption in terms of Rule 6DD(b) of Income-Tax Rules, 1962. In the circumstances, the addition as made by the AO and as confirmed by the ld. CIT (A) by invoking the provisions of section 40A(3) of I.T. Act,1961*

is deleted.” The assessee has also relied in the case of ITO Ward 2(1) vs. Midanpore vs. Shri Sankardas , I.T.A. No. 2255/Kol/2013/A.Y. 2010-11 whereas it was held that the payment of bardana and sealing charges are covered by exceptions provided in rule 6DD , disallowance under section 40A(3) shall not applicable. In the light of above , the Ld. CIT (A) held that the payment is made by the Appellant to Government Authorized agents is falling under exceptions provided under rule 6DD. The Ld. CIT (A) further observed that the ledger account of payment has been produced during the course of appellate proceedings and it is found that the individual payments is below 20,000/- in a single day. Therefore, there is no infringement of section 40A(3) . Therefore, , the addition made by the AO amounting to Rs. 1,26,13,496/- was deleted.

5. Being, aggrieved the Revenue has filed this appeal before the tribunal. The Ld. D.R. relied on the order of the AO and submitted that the payment made to liquor warehouses are not in the nature of government payment. Further, the payment have been shown below Rs. 20,000/- to avoid the provision of section 40A (3) of the Act whereas enter payment is made by cash. Therefore, provisions of section 40A (3) are applicable and payments are not covered by Rule 6DD(b).
6. On the other hand, the learned Counsel pleaded that payment made to authorized agents of government which is compulsory and covered by exception provided under rule 6DD(b). Further, the learned Counsel submitted that the individual payments on a single day is below Rs. 20,000/- as reflected in ledger account placed at page No 49 to 55 of Paper Book. This fact has also been verified by the ld. CIT (A) as mentioned by him in the order. The learned Counsel placed reliance in the case of “M/s. Amrai

Pachwai & C. S. Shops vs. DCIT circle 1 Durgapur in I.T.A. No.1251/Kol/2011 A.Y. 2008-09 and ITO vs. Sankardas I.T.A. No. 2255/Kol/2013/AY2011-11 dtd. 21.02.2014, copy of the same are filed.

7. We have heard the rival submissions of both the parties and have perused the material available on record. We find that ld. CIT (A) has given a clear-cut findings that he has verified the ledger account of warehouses and observed that cash payment on a single day does not exceed Rs. 20,000/-. Therefore, we find that the payments made in a single day is below Rs. 20,000/- hence, there is no violation of provisions of section 40A (3) of the Act. We also find that the payments are made to authorized agents being warehouses authorized by the government, therefore, such payments are also covered by decisions of coordinated bench of Kolkata Tribunal in the case of ITO vs. Sankardas I.T.A. No. 2255/Kol/2013/AY2011-11 dtd. 21.02.2014, as relied by the Ld. A.R. and "M/s. Amrai Pachwai & C. S. Shops vs. DCIT circle 1 Durgapur in I.T.A. No. 1251/Kol/2011 A.Y. 2008-09, wherein it was held that "in the circumstances we are of the opinion that payment made by the assessee for the purchase of country liquor and country spirit from the territorial licensee bottling plant, IFB Agro Industries Ltd. , City Center is protected by exemption in terms of Rule 6DD(b) of Income-Tax Rules, 1962. In the circumstances, the addition as made by the AO and as confirmed by the ld. CIT (A) by invoking the provisions of section 40A(3) of I.T. Act,1961 is deleted.". Thus, the payments are also covered by exceptions provided under rule 6DD(b) of Income-Tax Rules, 1962. In the light of above facts, the grounds no.(i) to (iii) of revenue appeal is dismissed.
8. Ground no.(iv) relates to deletion of disallowance of interest of Rs. 20,30,818/- made out of interest payments.

9. Briefly, stated facts of the case are that the assessee, has claimed interest payments of Rs. 27,20,006/- on secured loan taken from banks. Whereas the assessee has also advanced unsecured loan of Rs. 60 Lakh to Smt. Seema Jain , Rs. 80,50,000/- to M/s. Malwa Resorts & Hotels India Ltd. and made investment in purchase of lands at Rs. 46,26,000/-, and there were personal loans without interest were outstanding of Rs. 44,13,513/- The AO accordingly worked out the interest chargeable on such interest free loans at Rs. 20,30,818/- @15% on such advances and disallowed the same out of total interest payments of Rs. 27,20,006/-. According to the AO, the assessee has failed to establish nexus between loan taken from bank and interest free loans and the business connection. The assessee has also not proved that borrowed fund have been used for business purpose only. In view of this matter, the AO disallowed the notional interest out of interest paid to bank on loans taken for business purpose.
10. Being, aggrieved the assessee filed an appeal before the ld. CIT (A). Where it was claimed that investment in business is more than borrowed funds, hence, it cannot be said that borrowed funds has been used for non-business purpose. The Ld. CIT (A) observed that the assessee has not given interest-bearing funds for non-business purpose. The assessee has sufficient capital and non-interest bearing funds to make investment in non-business purpose to give interest free loan. Accordingly, disallowance of interest made by the AO were deleted.
11. Being, aggrieved the Revenue has filed this appeal before the tribunal. The ld. D.R. submitted that the interest free loans were given out of interest-bearing funds borrowed from bank. Hence, the ld. CIT (A) is not justified in deleting the disallowance of notional interest. The assessee has given loan to

such person from whom no business interest has been derived; nor interest free loans were either given for business purpose. Therefore, the finding of ld. CIT (A) is not correct.

12. The learned Counsel submitted that ld. CIT (A) justified in deleting disallowance of interest. The assessee has sufficient capital and funds at his disposal out of which interest free loans were given. Some of loans were old advances not given during the year under consideration, therefore, no disallowances on same could be made. The assessee has given advances for purchase of land and vehicles hence, there is direct nexus between loan taken and given.
13. We have heard the rival submissions of both the parties and have perused the material available on record. We find that the assessee has given interest free loans amounting to Rs. 50 Lakh during year to Smt. Seema Jain out of loan account maintained with Punjab & Sindh Bank. This loan is not given for any business consideration, hence, the payment of interest to bank on such amount is diversion of interest bearing funds to non-interest bearing funds, hence, disallowance of interest amounting to Rs. 4,37,500/- is correctly made by the AO. We further find that loan of Rs. 80, 50,000/- is also given out of loan account from UCO Bank; therefore, there is direct nexus of interest bearing funds diverted to non-interest bearing funds. The AO has worked out interest attributable on these loans at Rs. 5, 93,750/- . Hence, this disallowance of interest is also confirmed as there is direct nexus between interest bearing loans taken and interest free loans given. In view of this matter, the disallowance of interest of Rs. 10,31,250/- [4,37,500+5,93,750] is confirmed out of total disallowance of interest of Rs. 20,30,818/- and balance is deleted. We therefore, modify the order of ld. CIT

(A) accordingly. The balance disallowance of interest is allowed in favour of the assessee as same pertained to business assets and carried forward loan from earlier years. Thus, this ground of appeal of revenue is partly allowed in favour of the revenue.

14. In the result, appeal of revenue is partly allowed.

15. The order pronounced in the open court on 17.01.2017

Sd/-

(डी.टी.गरासिया)
न्यायिक सदस्य
(D.T.GARASIA)
JUDICIAL MEMBER

Sd/-

(ओ.पी.मीना)
लेखा सदस्य
(O.P.MEENA)
ACCOUNTANT MEMBER

दिनांक /Dated : 17th January, 2017/opm