



IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA no.7322/Mum./2012
(Assessment Year : 2009-10)

Shri Swetal N. Desai
214, Ramjarukha
S.V. Road, Andheri (W)
Mumbai 400 058
PAN – ADNPD3397B

..... Appellant

v/s

Income Tax Officer
Ward-8(3), Mumbai

..... Respondent

Assessee by : Shri Mehul Shah
Revenue by : Shri Ritesh Misra

Date of Hearing – 07.03.2016

Date of Order – 11.03.2016

ORDER

PER SAKTIJIT DEY, J.M.

Instant appeal of the assessee is directed against the order dated 16th October 2012, passed by the learned Commissioner (Appeals)-18, Mumbai, for the assessment year 2009-10.

2. Assessee has raised three issues. The first issue, as raised in grounds no.2 to 6, pertains to disallowance of an amount of ₹ 2,892, out of telephone expenses.

3. Briefly stated the facts are, assessee an individual, is engaged in the business of manufacturing of inorganic salts, bulk drug, intermediates and fine chemicals. For the assessment year under consideration, assessee filed his return of income on 19th September 2009, declaring total income of ₹ 22,68,600. In the course of assessment proceedings, the Assessing Officer while verifying assessee's claim of expenditure under various heads, found that an amount of ₹ 2,892, debited to the Profit & Loss account is in respect of expenditure incurred to be for the residential telephone. Treating the expenditure incurred to be for personal purpose, assessee disallowed the same. Learned Commissioner (Appeals) also confirmed the disallowance.

4. Learned Authorised Representative submitted before us that the expenditure incurred for residential telephone is much more than what was debited to the Profit & Loss account. Learned Authorised Representative submitted, the amount of ₹ 2,892, debited to the Profit & Loss account represents international calls made by the assessee for his business purposes. He, therefore, submitted there is no reason to disallow the same.

5. Learned Departmental Representative relied upon the order of the learned Commissioner (Appeals) and the Assessing Officer.

6. We have considered the submissions of the parties and perused the material available on record. The fact that the expenditure incurred for the residential telephone is much more than the amount of ₹ 2,892, debited to the Profit & Loss account has not been disputed by the Department. Therefore, when the assessee has himself disallowed major part of the expenditure in relation to the residential telephone and has debited the amount of ₹ 2,892 to the Profit & Loss account towards international calls claimed to have been made for the business purpose, we do not find any reason for disallowance of the same considering the fact that the residential telephone may not have been exclusively used for personal purposes and on some occasions must have been used for assessee's business purpose also. That being the case, we delete the addition made of ₹ 2,892.

7. In grounds no.7 to 12, assessee has challenged part disallowance of expenditure incurred on motorcar.

8. As could be seen, during the assessment proceedings, Assessing Officer, finding that assessee has claimed total motorcar expenses of ₹ 1,27,172, comprising of expenses of ₹ 74,525 and depreciation of ₹ 52,647, concluded that the motorcar must have been used for personal purpose of assessee and accordingly, disallowed 20% out of the total expenditure claimed which worked out to ₹ 25,434. Though,

assessee challenged the disallowance before the learned Commissioner (Appeals), he also confirmed such disallowance.

9. We have considered the submissions of the parties and perused the material available on record. Assessee has not proved the fact with cogent evidence that motorcar was exclusively kept for business purpose. Therefore, use of motorcar for personal purpose to certain extent cannot be ruled out. We, therefore, do not find any infirmity in the decision of the Departmental Authorities in disallowing 20% out of the total expenditure claimed, which according to us, is fair and reasonable. Thus, ground no. 7 to 12 are dismissed.

10. The third issue as raised in grounds no.13 to 21 relates to disallowance of interest of ₹ 11,90,095 on the allegation of advancement of interest bearing borrowed funds for non-business purposes.

11. Briefly stated the facts are, in the course of assessment proceedings, the Assessing Officer noticed that assessee has claimed interest expenditure of ₹ 11,90,095, against the income from other sources. The Assessing Officer, therefore, called upon the assessee to justify the expenditure claimed. Though, the assessee submitted his explanation in support of expenditure claimed, but the Assessing Officer alleged that explanation of the assessee is not clear and

rejected the same. He observed, the interest expenditure is not pertaining to the income earned under the head income from other sources. He, therefore, disallowed entire expenditure of ₹ 11,90,095. Assessee challenged the disallowance before first appellate authority.

12. The learned Commissioner (Appeals), after examining the facts and material on record, found that the assessee during relevant previous year, has earned rental income of ₹ 8,26,320 and has advanced a part of the borrowed funds to some companies and also earned interest income of ₹ 7,48,138 therefrom. He noticed that while the assessee was paying interest to the banks @ 14.25%, it has received interest @ 12%, the learned Commissioner (Appeals) finally concluded that as against the total interest income of ₹ 7,48,138, assessee has incurred interest expenditure of ₹ 11,90,095, only the differential amount of ₹ 4,41,957, may be considered for disallowance and, accordingly, the Assessing Officer restricted the disallowance to that amount.

13. Learned Authorised Representative submitted, the assessee, during relevant previous year, has offered income of ₹ 7,48,138, from interest and ₹ 5,80,880, from services charges under the head income from other sources. He submitted, during relevant previous year, assessee had sufficient interest free funds available with him to make

the advance. In this context, he referred to the Balance Sheet as at 31st March 2009. He, therefore, submitted that as the assessee was having sufficient interest free surplus funds available with him, the presumption would be the interest free advances made to the parties are out of such surplus interest free funds available. He, therefore, submitted, in such circumstances, no disallowance of interest expenditure can be made. For such proposition, he relied upon the decision of Hon'ble Jurisdictional High Court in CIT v/s Reliance Utilities and Power Ltd. [2009] 313 ITR 340 (Bom.). Further, learned Authorised Representative submitted, the Assessing Officer has not established nexus between the borrowed funds and so called interest free advance. Alternatively, it was submitted as the assessee has obtained the borrowed fund at the interest rate of 14.25%, whereas it has advanced loan by charging interest @ 12% the excess interest paid @ 2.25% if at all can only be considered for disallowance.

14. Learned Departmental Representative relied on the order of the authorities below.

15. We have considered the submissions of the parties and perused the material available on record. As is evident, the Assessing Officer disallowed entire interest expenditure on the allegation that assessee has utilised interest bearing borrowed funds for non-business

purposes. However, learned Commissioner (Appeals) has restricted the disallowance to the net interest expenditure after set off of interest income. The issue before us is whether any disallowance of interest expenditure can at all be made under the given circumstances. As could be seen from the Balance Sheet of the assessee company as at 31st March 2009, a copy of which is at Page-7 of the paper book, surplus interest free fund available with the assessee are as under:-

Capital account	₹ 82,59,690
Interest free unsecured loan	₹ 85,36,035

16. Thus, the total surplus fund available with the assessee is to the tune of ₹ 1,67,95,725. From the aforesaid facts, it is clear that the interest free surplus found available with the assessee is more than sufficient to take care of the investments made by the assessee in the sister concern even assuming them to be interest free advances. Thus, applying the principle laid down by the Hon'ble Jurisdictional High Court in Reliance Utilities and Power Pvt. Ltd. (supra) and CIT v/s HDFC Bank Ltd. [2014] 366 ITR 505 (Bom.), no disallowance of interest expenditure could be made. Even otherwise also, it is not a fact that the assessee has made interest free advance. It is proved on record that assessee has charged interest on the advance made @ 12%. In the aforesaid view of the matter, we hold that no disallowance

out of interest expenditure can be made as the investment made by the assessee can be presumed to have been made out of surplus interest free funds available with him. Accordingly, we delete the addition sustained by the learned Commissioner (Appeals).

17. In the result, appeal stands partly allowed.

Order pronounced in the open Court on 11.03.2016

Sd/-
RAMIT KOCHAR
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED:

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai