

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "D", MUMBAI**

**BEFORE SHRI SANJAY GARG (JUDICIAL MEMBER)  
AND  
SHRI ASHWANI TANEJA (ACCOUNTANT MEMBER)**

I.T.A. No.3049/Mum/2013  
(Assessment Year: 2009-10)

M/s Rajesh & Co E/9, 1 <sup>st</sup> Floor Bhangwadi Kalbadevi, Mumbai 2	vs	ITO, 14(3)(3), Mumbai
PAN : AAEFR0949P		
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Shri B.S. Bist (CIT – DR)

Date of hearing : 29-09-2016  
Date of pronouncement : 30-09-2016

**ORDER**

**Per ASHWANI TANEJA, AM:**

This appeal is against the order of Commissioner of Income-tax (Appeals)-25, Mumbai [hereinafter called CIT(A)] dated 26-02-2013 passed against the assessment order dated 26-12-2013 for A.Y. 2009-10 on the following grounds:

**1 Disallowance of interest expenditure:**

- 1.1 The learned Commissioner of Income Tax (Appeal) erred in upholding the disallowance of interest expenditure.
- 1.2 The learned Commissioner of Income Tax (Appeal) failed to appreciate that there is no justification for

disallowance of interest expenditure.

1.3 The learned Commissioner of Income Tax (Appeal) failed to appreciate that the maximum amount that can be attributed to the borrowed funds is only Rs. 17,88,595/- and accordingly, the disallowance can at the most be of Rs. 1,90,092/- and nothing more.

2. The learned Commissioner of Income Tax (Appeal) erred in upholding the adhoc disallowance of Rs. 9,760/- out of conveyance expenses and Rs. 17,740/- out of sundry expenses at the rate of 20%.

3. The learned Commissioner of Income Tax (Appeals) failed to appreciate that the adhoc disallowance at the rate of 20% is excessive and unreasonable."

2. It is noted that in this case, none appeared on behalf of the assessee. On an earlier occasion, cost of Rs.100/- was imposed upon the assessee on 09-02-2015 for not arguing the matter. Despite that there has been no appearance from the assessee. As per records, notice was sent by RPAD, which is not received back as un-served. Under these circumstances, we have no option but to proceed *ex parte* qua the assessee.

3. **Regarding ground 1**, it was submitted by the Ld. DR that disallowance was made on account of interest on the ground that interest free advances were made by the assessee aggregating to Rs.6,83,200. Before the Ld. CIT(A), exhaustive details were filed but the disallowance was confirmed. We have gone through the orders of lower authorities. It is noted by us that one of the submissions made by the assessee before the Ld. CIT(A) reads as under:

*"Without prejudice to the above, it is humbly submitted that the disallowance of interest of Rs. 6,83,2001- is excessive and unreasonable. Opening balance of the the borrowed funds is only Rs.15, 91,402/- of which interest free funds are Rs. 44,4021- and interest component of the preceding year is Rs. 2,45,6021-. Thus, in the preceding year only the amount of Rs. 13,01,398/- (15.91,402 (44,402+2,45,602) can be attributed to the interest free advances to the sister concerns and nothing more. In the relevant year, the addition to the interest free advances to the sister concerns is of Rs. 6,39,297/- and the interest free loans received by the Appellant is Rs. 1,52,100/-. Thus the net interest free advances to the sister concerns is Rs.*

*4,87,197/- which can be attributed to the wed funds in the current year. Thus, the total amount which can be attributed to the borrowed funds in the current year. Thus, the total amount which can be attributed to borrowed funds is Rs.17,88,595/- (13,01,398 + 4,87,197). Thus, the disallowance could be at the most be Rs.1,90,092/- (9,09,933 x 17,88,595) / 76,20,738). Thus the learned assessing officer was not justified in making the disallowance of Rs.6,83,200/- and the disallowance is excessive and unreasonable. Your honour may be pleased to reduce the disallowance accordingly."*

4. It is noted from the perusal of the conclusive findings of the Ld.CIT(A) that the aforesaid argument has not been properly dealt with. The assessee has made an attempt to show that even if the disallowance has to be made but the amount has to be quantified correctly on the basis of correct facts. This argument has not been properly dealt with by the Ld.CIT(A) while confirming the disallowance. Therefore, in the interest of justice, we send this issue back to the file of the Ld. CIT(A) with a direction to give opportunity of hearing to the assessee to explain these facts and disallowance, if any should be made based upon the correct facts. Ground 1 may be treated as partly allowed for statistical purpose.

5. **In grounds 2, 3 & 4**, the assessee has contested the adhoc disallowance out of conveyance, made @20%. It has been stated in the grounds that the rate of disallowance is excessive and unreasonable. The Ld. DR fairly submitted that it can be reduced to 10% in the facts and circumstances of the case. Therefore, keeping in view the facts and circumstances of the case we direct that the disallowance be reduced to 10%; the assessee gets relief accordingly. These grounds may be treated as partly allowed.

6. In the result, appeal is partly allowed.

*Order pronounced in the court on this 30<sup>th</sup> day of September, 2016.*

Sd/- (SANJAY GARG)	Sd/- (ASHWANI TANEJA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 30<sup>th</sup> September, 2016

Pk/-

Copy to :

1. The appellant
2. The respondent
3. The CIT(A)
4. The CIT
5. The Ld. Departmental Representative for the Revenue, D-Bench

(True copy)

By order

ASSTT.REGISTRAR, ITAT, MUMBAI BENCHES