

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH; AMRITSAR.**

BEFORE SH. T. S. KAPOOR, ACCOUNTANT MEMBER  
AND SH. N.K. CHOUDHRY, JUDICIAL MEMBER

**ITA No. 425/(Asr)/2014**

Assessment Years: 2005-06

PAN: AAAFP9505H

M/s PMS Diesels,  
G.T.Road, Village Jamalpur,  
Phagwara.

**(Appellant)**

Vs. DCIT, Phagwara Circle,  
Phagwara.

**(Respondent)**

Appellant by: Sh. Tarun Bansal (Adv.)

Respondent by: Sh. Ved Pal Singh (DR)

Date of hearing: 28.03.2017

Date of pronouncement: 05.05.2017

**ORDER**

**PER T. S. KAPOOR (AM):**

This is an appeal filed by assessee against the order of Ld. CIT (A), Jalandhar, dated 25.04.2014 for Asst. Year 2005-06.

2. The assessee has taken various grounds of appeal, however the crux of grounds of appeal is the action of Ld. CIT(A) by which he has confirmed disallowance of interest u/s 36(1)(iii) of the Act for making interest free advance to various persons.

3. The brief facts as noted in the assessment order are that the Assessing Officer vide assessment order dated 24.12.2007 had made certain disallowances of interest u/s 36(1) (iii) of the Act on account of interest free loans to 10 parties noted at page 2 of assessment order. The assessee had filed an appeal before Ld. CIT(A) who had allowed the

appeal of the assessee. On further appeal by revenue, the Hon'ble ITAT vide order dated 26<sup>th</sup> June, 2009 had restored matter to the file of the Assessing Officer with the following directions:

*“The arguments placed before the Ld. CIT(A) as well as before us are contrary to the findings of the Assessing Officer. Hence, one has to go through each ledger account and has to be examined individually. For this purpose, we set aside the entire issue to the file of the Assessing Officer to examine whether there is any trading transaction between these parties. If there is trading transaction between the parties, the advance to be treated as trade advance made on account of commercial expediency and such notional interest cannot be treated as income of the assessee. In view of the above, the issue is set aside to the file of the CIT(A) with the above direction. The CIT(A) is also directed to take net balance in each account and re-examine the same”.*

In view of the directions of Hon'ble ITAT, the Assessing Officer passed order on dated 16.12.2010 and again made disallowances of interest u/s 36(1) (iii) of the Act. While completing the assessment, the Assessing Officer examined the 14 accounts relating to advances instead of 10 accounts in which the Assessing Officer had originally made the disallowances.

4. Aggrieved with the order of the assessee, the assessee filed appeal before Ld. CIT(A) who partly allowed appeal and further aggrieved the assessee is an appeal before us.

5. At the outset, the Ld. AR filed the written synopsis highlighting therein that Hon'ble ITAT vide order dated 26.06.2009 had directed Assessing Officer to verify 10 parties to which interest free advances were given whereas the Assessing Officer had examined 14 parties which is against the directions of Hon'ble ITAT. Therefore, it was prayed that only

10 parties involved in the original assessment order should have been considered.

6. The Ld. AR submitted that in respect of 4 parties, the balances were outstanding from the earlier year and therefore, the addition was not warranted, in view of the judgments in the following cases:

- “(i) *DCIT Vs. Ishar infrastructure ITA No. 198/Asr/2013.*
- “(ii) *Ajay Electronics Vs. ITO (2016) 52 (ITR Trib) 332 (Asr)”.*

Without prejudice, the Ld. AR submitted that while making disallowance u/s 36 (1) (iii), the Assessing Officer should have restricted the disallowance to the amount of loans which exceeded the capital of the assessee. The Ld. AR submitted that the capital of the partner's was to extent of Rs. 1.98 crore approximately whereas the figure of interest free advance was very small and therefore, no disallowance was warranted. Reliance in this respect was placed on the following judgments:

- “(I) *MBD Printographics Pvt. Ltd Vs. DCIT*  
*(2016) ITA No. 534/Asr/2014 dated 13.6.16 61 I.T. Reps 187*
- “(II) *Malhotra Book Depot Vs. ACIT*  
*(2016 61 I.T. Reps 585 – ITA No. 125 & 196/Asr/2015*
- “(III) *CIT Vs. Satish Bala Malhotra & Ors.*  
*(2016) 387 ITR 403 (P&H)*
- “(IV) *CIT Vs. Max India Ltd (No.2)*  
*(2016) 388 ITR 81 (P&H)”*

7. The Ld. DR, on the other hand heavily placed his reliance on the orders of authorities below.

8. We have heard the rival parties and have gone through the material placed on record. We find that it is a fact that in original assessment proceedings, the Assessing Officer had made disallowance of interest u/s 36(1)(iii) in respect of 10 parties, whereas the Assessing Officer in the second round of proceedings examined 14 parties and made disallowances accordingly which is not as per directions of Hon'ble ITAT. Therefore, we direct the Assessing Officer to restrict the disallowance if any in respect of only 10 parties which were originally listed in the original assessment order. We further find that in a few cases, the amount of advances was as opening balances and there are judgments of Amritsar Tribunal holding that in respect of old advances from earlier years, no disallowance u/s 36 (1) (iii) of the Act was warranted. Further the disallowance if any u/s 36(1)(iii) has to be restricted to the amounts of loans which exceeded the capital of the assessee as has been held by Hon'ble Amritsar Bench in various case laws relied on by assessee. Therefore, the Assessing Officer is directed to restrict the disallowance of interest on loan amounts exceeding the available capital of the assessee. With these directions the appeal of the assessee is set aside to the office of Assessing Officer to reframe the assessment order in terms of above said directions.

9. In view of the above, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 05.05.2017.

Sd/-  
(N.K. CHOUDHRY)  
JUDICIAL MEMBER

Sd/-  
(T.S. KAPOOR)  
ACCOUNTANT MEMBER

Dated: 05/05/2017

GP/Sr.PS/

Copy of the order forwarded to:

1. The Assessee:
2. The
3. The CIT(A)
4. The CIT
5. The SR DR, ITAT, Amritsar.

True copy

By order