

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'D' : NEW DELHI)**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.3338/Del./2016  
(ASSESSMENT YEAR : 2010-11)**

ACIT, Circle 61 (1), vs. Shri Rohit Kochar,  
New Delhi. Unit No.1120-21 and 915,  
DLF Tower – A, Jasola Distt. Centre,  
New Delhi – 110 025.

**(PAN : AANPK6049G)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri B.S. Sistani, CA  
REVENUE BY : Shri Naina Soin Kapil, Senior DR

Date of Hearing : 27.11.2018

Date of Order : 30.11.2018

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

The appellant, ACIT, Circle 61 (1), New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal, sought to set aside the impugned order dated 30.03.2016 passed by Ld. CIT (Appeals)-20, New Delhi qua the Assessment Year 2010-11 on the following grounds inter alia that:-

*“1. In the facts and circumstances of the case, the Ld. CIT (A) has erred in law in deleting the addition of Rs.36,59,659/- made on account of disallowance of interest expenses debited in*

*P&L account as the assessee made huge interest free advances for unrelated activities.*

*2. In the facts and circumstances of the case, the Ld. CIT (A) has erred in law in reducing the addition made by the AO on account of Business Promotion Expenses from RS.39,49,797/- to Rs.9,87,449/- without appreciating the facts of the case mentioned in the assessment order.”*

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : the assessee is engaged in the corporate tax and business advisory services having income from house property, income from profession and income from other sources. During the year under assessment, assessee debited interest expenses of Rs.3,02,49,825/- on account of interest on property loans, Rs.5,26,473/- on account of interest on auto loan and Rs.1,56,267/- on account of interest on unsecured loans. AO noticed that the assessee has advanced loans and advances to the tune of Rs.4,01,83,766/- to various parties including related parties without charging any interest and advances given by him and declining the submissions made by the assessee, AO disallowed proportionate interest expenses claimed by the assessee by taking average rate of interest @ 12% per annum on advances for non-professional activities to the tune of Rs.36,59,659/- out of the total interest expenses debited at Rs.3,09,32,566/- is disallowed on

account of loan being not utilized for the purpose of professional activities of the assessee.

3. Assessee claimed sales promotion expenses to the tune of Rs.1,97,48,988/- for clients development and entertainment forms significant part of the efforts to increase the turnover because the assessee has been dealing with large corporations at all levels which requires intensive travelling all over the world, one to one contact and interaction at the highest level. AO noticed that as against the increase in the gross receipt during the year under assessment of 25.97%, there is increase in the claim of business promotion expenses to the tune of 67.52%. AO also noticed that the assessee has received few prestigious awards from the Government during the year under assessment but most of the parties hosted by the assessee, gifts given by the assessee on receiving the above awards have been claimed as business promotion expenses, so part of the business promotion expenses claimed by the assessee are certainly personal in nature and thereby disallowed 20% of the aforesaid expenses amounting to RS.39,49,797/- towards personal in nature and thereby made addition thereof to the total income of the assessee.

4. The assessee carried the matter before the Id. CIT (A) by way of an appeal who has partly allowed the appeal. Feeling

aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

5. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

**GROUND NO.1**

6. Undisputedly, the assessee has availed of secured loans for purchasing property from July 2006 to January 2009 to the tune of Rs.25,51,96,901/- and paid interest thereon to the tune of Rs.3,07,76,299/-. Similarly, the assessee has taken loans of Rs.1,58,14,608/- during the period September 2004 to July 2009 and paid interest thereon during the year under assessment to the tune of Rs.5,26,473/-. Assessee has also taken unsecured loan during April 2009 to 31.03.2010 to the tune of Rs.1,12,90,000/- from different persons. It is also not in dispute that the assessee has given interest free loan and advances during the year under assessment to the tune of Rs.4,01,83,766/- to his relatives and friends. AO disallowed proportionate interest paid to the bank by the assessee on the grounds that the assessee has himself given the interest free loans and advances to his relatives and family members for their personal needs.

7. Identical issue has come up before the Tribunal in *assessee's own case for AY 2008-09 & 2009-10 in ITA Nos.3699 & 3700/Del/2012 order dated 04.03.2016* wherein the coordinate Bench of the Tribunal, after following the decision rendered by the *Hon'ble jurisdictional High Court in case cited as CIT vs. Sushma Kapoor (2009) 319 ITR 299*, confirmed the order of CIT (A) deleting the addition made on account of proportionate disallowance of interest made by the AO.

8. When it is not in dispute that the AO has made addition on account of disallowance of interest by following the earlier years assessment orders which have now been over-turned by the coordinate Bench of the Tribunal by deleting the disallowance of interest expenditure, the facts of the case at hand are identical. Operative part of the decision rendered by the coordinate Bench of the Tribunal in assessee's own case (supra) is as under :-

*“18. Now the department is in appeal. The ld. DR strongly supported the order of the AO and reiterated the observations made in the assessment order dated 31.12.2010. It was a housing loan but the building constructed was not for the business purposes. Therefore, the interest paid on the said loan could not have been allowed against the business income. It was further stated that the assessee diverted the interest bearing funds towards interest free loans. Therefore, the disallowance was rightly made by the AO.*

*19. In his rival submissions the ld. Counsel for the assessee reiterated the submissions made before the authorities below and strongly supported the impugned*

*order. It was further submitted that the assessee was having sufficient capital to his credit and the advances or interest free loans were given out of the surplus capital and not out of the loans taken on interest. It was also stated that the secured loans from the bank were used for the specific office property. Therefore, the interest was allowable u/s 36(1)(iii) of the Act and the ld. CIT(A) rightly directed the AO to allow the same.*

*20. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed from the copies of the secured loans reproduced by the ld. CIT(A) at page no.7 of the impugned order and page no. 3 of the assessment order that the assessee raised secured loans amounting to Rs.1,52,48,349/- from ICICI Bank and HDFC Bank and also raised a loan of Rs.26,45,63,512/- against the Jasola property and Chennai property from the ICICI bank. Those loans were utilized by the assessee for the purposes for which those were raised and even the AO had not pointed out any instance of diversion of those secured loans. Therefore, it cannot be said that the assessee diverted interest bearing funds towards interest free advances or loans particularly when the assessee had sufficient credit balance in his capital account to the tune of Rs.21.76 crores.*

*21. On a similar issue the Hon'ble Jurisdictional High Court in the case of CIT Vs Ms. Sushma Kapoor (2009) 319 ITR 299 (supra) approved the factual findings given by the ld. CIT (A) which were confirmed by the ITAT by observing as under:-*

*"The Commissioner of Income-tax (Appeals), in appeal apart from other findings recorded a categorical finding that the amount of advances made to the parties were paid as advances and in any case they were given in the earlier years, i.e., before the loan was taken on which interest was paid and, therefore, these trade advances were not given out of the loan taken by the assessee. This is clearly a finding of fact."*

*22. In the instant case also, few of the interest free advances were given prior to the loan raised from the bank another loans were raised for acquiring the assets i.e. vehicle and business property. Moreover in the present case,*

*the AO could not establish nexus between the interest bearing and the interest free advances and also could not bring any material on record to substantiate that the interest bearing unsecured loans raised by the assessee from the different banks were not used for the business purposes for which those loans were taken. We, therefore, considering the totality of the facts and the ratio laid down by the Hon'ble Jurisdictional High Court in the case of CIT Vs Ms. Sushma Kapoor (supra) are of the view that the ld. CIT (A) was fully justified in deleting the disallowance made by the AO."*

9. When there is factual finding given by the CIT (A) that as regards the interest free advances given by the assessee even prior to the loan raised from the bank for acquiring vehicles and business properties, the Revenue has failed to establish any nexus between the interest bearing funds and interest free advances made to his relatives and friends. Moreover, no cogent evidence is there on the file if secured loans have not been used by the assessee for business purposes. Assessee proved to have taken the secured loans for specific purpose and their utilization has not been disputed by the AO. AO has merely made the addition on the ground that the assessee has utilized sizable amount out of the secured loans to be given as interest free advances to his family members, related concerns and for acquiring property for their personal needs.

10. In view of what has been discussed above and following the decision rendered by the coordinate Bench of the Tribunal for AY

2008-09 and 2009-10, we are of the considered view that the ld. CIT (A) has rightly deleted the addition after scrutinizing the facts and there is no scope to interfere into the findings returned by the ld. CIT (A). So, ground no.1 is determined against the Revenue.

### **GROUND NO.2**

11. Assessee claimed sales promotion expenses to the tune of Rs.1,97,48,988/- during the year under assessment, out of which 20% of the above expenses amounting to Rs.39,49,797/- has been disallowed by the AO on the ground that part of the business promotion expenses claimed by the assessee are of personal in nature. The ld. CIT (A) during appeal reduced the personal promotion expenses disallowed by the AO @ 20% to 5% which are under challenge before the Tribunal by the Revenue.

12. Undisputedly, in the preceding years, such business promotion expenses claimed by the assessee were allowed to the tune of 5% by the Revenue. It is also not in dispute that the assessee is engaged in the corporate tax and advisory services and has been conferred with Rashtriya Gaurav Award, Rajiv Gandhi Award, International Council of Jurists Award and National Bar Award by well known ministers, Prime Ministers of India and

Chairman, Law Commission of India during the year under assessment.

13. Incurrence of expenses has not been disputed by the Revenue but they have guess-worked the personal elements in the expenses incurred by the assessee to tune of 20% by the AO and then to the tune of 5% by the Id. CIT (A). Keeping in view the facts inter alia that there is a steep increase in the current year's business promotion expenses to the tune of 67.52% whereas increase in the gross receipt during the year under assessment is merely 25.97%, we are of the considered view that personal element in the business promotion expenses to the extent of 10% of the total expenses cannot be ruled out. So, we direct the AO to disallow 10% of the business promotion expenses of Rs.1,97,48,988/- claimed by the assessee. Consequently, ground no.2 raised by the Revenue is partly allowed.

14. Resultantly, the appeal filed by the assessee is partly allowed.

**Order pronounced in open court on this 30<sup>th</sup> day of November, 2018.**

**Sd/-  
(N.K. BILLAIYA)  
ACCOUNTANT MEMBER**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 30<sup>th</sup> day of November, 2018  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-20, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.