

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "एस.एम.सी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCHES, "SMC" CHANDIGARH

श्री एन.के.सैनी, उपाध्यक्ष
BEFORE: SHRI. N.K.SAINI, VICE PRESIDENT

आयकर अपील सं./ ITA No. 91 /Chd/2019
निर्धारण वर्ष / Assessment Year : 2013-14

Shri Dharam Pal Aggarwal 59-K, Sarabha Nagar Ludhiana, Punjab	बनाम	ACIT Circle-6 Ludhiana, Punjab
स्थायी लेखा सं./PAN NO: AAYPA9723E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Ashwani Kumar, CA
राजस्व की ओर से/ Revenue by : Smt. Chandrakanta, Sr. DR

सुनवाई की तारीख/Date of Hearing : 16/07/2019
उद्घोषणा की तारीख/Date of Pronouncement : 26/08/2019

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

This is an appeal by the Assessee against the order dt. 19/12/2018 of Ld. CIT(A)-3, Ludhiana.

2. In the present appeal Assessee has raised the following grounds:

1. That order passed u/s 250(6) of the Income Tax Act, 1961 is against law and facts on the file in as much as the Ld. Commissioner of Income Tax (Appeals)-3, Ludhiana was not justified to arbitrarily uphold the action of the Ld. Assessing Officer in disallowing a sum of Rs. 15,44,043/- out of interest account by resort to provisions of Section 57(iii).

2. That he was further not justified to arbitrarily uphold the action of the Ld. Assessing Officer in disallowing a sum of Rs. 2,01,874/- out of car expenses, depreciation, telephone and travelling expenses on account of estimated personal use thereof in addition to the disallowance already made by the appellant at Rs. 1,74,371/-.

3. Vide Ground No. 1 the grievance of the assessee relates to the confirmation of disallowance of Rs. 15,44,043/- out of interest account made by the A.O.

4. Facts related to this issue in brief are that the assessee filed his return of income on 19/09/2013 declaring an income of Rs. 19,08,250/- which was processed under section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'Act'), later on the case was selected for scrutiny.

5. During the course of assessment proceedings the A.O. noticed that the Annexure-D(Loans and Advances) enclosed with balance sheet for the year

under consideration revealed that the assessee had given interest free advances to friends and family which were not for the purpose of earning income from other sources as per requirement of Section 57(iii) of the Act. He also observed that the assessee had debited Rs. 5,66,645/- on account of interest on car loan in the Profit & Loss Account and had claimed the deduction on interest expenditure under section 57 to the extent of Rs. 40,22,756/-. The A.O. also observed that the loans to friends and relative outstanding in the balance sheet were at Rs. 5,00,000/- to M/s Dev Bhoomi Angora Spng & Allied Industries and Rs. 11,65,869/- to M/s Shakti Alpha Securities Pvt. Ltd. He also observed that following accounts were squared up loans in the proprietorship firm during the year:

Sr. No.	Particular	Amount Squared up during the year
1.	Sh. S.P. Bansal	Rs.60,00,000/-
2.	Sh. Sanjay Bansal	Rs.65,00,000/-
3.	M/s Fab Texere India P. Ltd.	Rs.44,60,000/-
4.	Sh. Amit Aggarwal	Rs.19,00,690/-

5.1 The A.O. asked the assessee to provide the breakup of deduction claimed under section 57 and draw nexus between the interest paid and received for the purpose of allowability of expenses under section 57 of the Act. The assessee submitted that no fresh loans had been raised during the year rather the loans had been squared up for which the interest was being paid in the past. The assessee filed the reply to the A.O. as under:

"Your Honour asked the assessee to justify the claim of interest paid u/s 57 of the act, against interest income, a reply to the same has already been submitted during the course of assessment proceedings on 15.03.2016. Further, it is submitted that the assessee is maintaining books of account both in respect of transaction of his proprietary concerns namely M/s Shakti International and also transactions in his individual capacity. The borrowing in which interest was paid and the advances given out of the interest bearing funds has been shown in his individual capacity. The assessee has duly received interest on these advances. However, during the year there are certain transaction/ transfer of funds which were made between the assessee and his proprietary concern. No interest has been charged on such funds transferred since the taxability of the income as well as allowance of the expenses is under the same hands i.e. in his individual capacity. Otherwise due to large amount of transactions, this exercise has not been carried out and the claim of interest paid has been made under one hear i.e. u/s 57 of the Act. As such, the possibility of borrowed funds used by the assessee in his proprietary concern carrying business was there and that part of the interest is otherwise allowable as expenses to the assessee under the head of income from business and profession.

5.2. The A.O. did not find merit in the submissions of the assessee and was of the view that in the absence of direct tax deduction under section 57(iii) the interest could not be allowed and further there was no business purpose involved in loans and advances which had been squared up during the year, the same could not be allowed under section 36(1)(iii) of the Act. The A.O. worked out the disallowance at Rs. 15,44,043, the calculations had been given at page 6 to 8 of the assessment order dt. 21/03/2016 for the cost of repetition the same are not reproduced herein.

6. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and submitted as under:

This is in continuation to earlier submissions filed on 23.10.2018 against an order under Section 143(3) of the Income-Tax Act, 1961 in the case of Sh. Dharam Pal Aggarwal (herein after referred to as "the appellant") for the above captioned assessment year.

At the outset, it is also respectfully submitted that, from the perusal of a chart enclosed, the amount of interest-free funds available with the appellant on the dates of advance more than the amount of interest-free advances, the extract of which is tabulated as below:

<i>Date of Advance</i>	<i>Interest-Free Funds [Capital + Interest-Free Loans Received)</i>	<i>Interest-Free Loans Given</i>
<i>12.04.2010</i>	<i>7,64,25,090.38</i>	<i>3,56,17,542.00</i>
<i>28.06.2010</i>	<i>7,64,36,758.00</i>	<i>4,33,20,542.00</i>
<i>13.08.2010</i>	<i>7,86,71,310.00</i>	<i>4,89,60,542.00</i>
<i>13.01.2011</i>	<i>8,13,62,852.00</i>	<i>5,85,62,632.00</i>
<i>14.02.2011</i>	<i>8,06,37,577.00</i>	<i>5,59,90,232.00</i>
<i>05.03.2013</i>	<i>4,71,35,845.00</i>	<i>1,10,83,450.00</i>

From the above, it could be deduced that the amount of Interest-Free Loans advanced were effected out of the appellant's capital and interest-free loans received. No borrowed funds (Interest-Bearing Funds) were used for making such advances. Accordingly, no disallowance of proportionate interest expenditure amounting Rs. 15,44,043/- under Section 57 (iii) of the Income-Tax Act, 1961 could be made, and, such interest expenditure is an allowable business expenditure.

Without prejudice to the submissions made above, if amount of interest-free funds advanced to Mr. S.P. Bansal and Mr. Sanjay Bansal were effected out of interest-bearing borrowed funds, then also no disallowance of proportionate interest expenditure could be effected, since such advances were made for the purposes of business. The appellant, being, an indenting agent has to talk to various overseas constituents regarding supply of material, availability of new products and payment matters etc. The appellant acts as an indenting agent on behalf of M/s Bansal Spinning Mills Limited, of which Mr. S.P. Bansal and Mr. Sanjay Bansal are the directors. Accordingly, the appellant procured huge value of orders [one Container costs Rs. 1 Crore] for M/s Bansal Spinning Mills Limited from Australia. In turn, the appellant earned commission on such orders from M/s Bansal Spinning Mills Limited amounting Rs. 54,51,451/-. However, in order to safeguard the interest of its client i.e. owing to quality specifications in products, the appellant offered them security in the form of advance to directors of M/s Bansal Spinning Mills Limited i.e. Mr. S.P. Bansal and Mr. Sanjay Bansal, so that M/s Bansal Spinning Mills Limited could securely make payments against import purchases, even if M/s Bansal Spinning Mills Limited encountered quality related issues. If such a security was not given to M/s Bansal Spinning Mills Limited or any other client, then the appellant would not be able to do its Business successfully i.e.

to act as an indenting agent on behalf of buyers desirous of purchasing overseas. No one would like to entrust upon the appellant, if the appellant ensures complete quality specifications in an imported product by guaranteeing them in the form of a security (advance to Mr. S.P. Bansal and Mr. Sanjay Bansal, Directors of M/s Bansal Spinning Mills Limited). Thus, the advance to Mr. S.P. Bansal and Mr. Sanjay Bansal, Directors of M/s Bansal Spinning Mills Limited was out of commercial/business expediency. Accordingly, no disallowance of proportionate interest expenditure could be made, since interest paid on capital borrowed was used for the purposes of Business of the appellant, and, hence an allowable expenditure.

Hope Your Honor would find the above position in order, and, shall proceed to adjudicate the appeal accordingly.

7. The Ld. CIT(A) inclined to agree with the contention of the A.O. and held that the assessee had failed in clear terms to distinguish between the source of borrowed funds or own funds for the purpose of claim under section 57 of the Act. Accordingly the disallowance of Rs. 15,44,043 made by the A.O. under section 57 of the Act was upheld. Reliance was placed on the following case laws:

- Smt. Padmawati Jaikrishna Vs. Addl. CIT 166 ITR 176 (SC)
- Mrs. Arundhati Balkrishna Vs. CIT, Ahmedabad. 177 ITR 275 (SC)
- Vijay Laxmi Sugar Mills Ltd. Vs. CIT 191 ITR 647 (SC)
- Karnataka Forest Plantations Corpn. Ltd. 156 ITR 275 (Karnataka HC)
- CIT Vs. Rajendra Prasad Moody [1978] 115 ITR 519 (SC)
- Smt. Virmati Ramakrishan Vs. CIT 131 ITR 659 (Guj. HC)

8. Now the assessee is in appeal.

9. Ld. Counsel for the Assessee reiterated the submissions made before the authorities below and further submitted that the similar interest paid on the loans was disallowed by the A.O. in the preceding year i.e; 2012-13, however the same was deleted when the matter was taken before the ITAT in ITA No. 315/Chd/2017, vide order dt. 22/04/2019 and that in this year the assessee reduced the interest from the interest income earned under section 57 of the Act. It was submitted that interest bearing loans were raised by the Assessee for the business purposes and had been used for the purposes of earning income as per the requirement of Section 57(iii) of the Act. It was further submitted that interest free advances and loans were given out of the surplus funds available with the assessee therefore the disallowance made by the A.O. and sustained by the Ld. CIT(A) was not justified. The reliance was placed on the judgment of the Hon'ble Apex Court in the case of

- CIT Vs. Hero Cycles P. Ltd. reported at 379 ITR 347 (SC)

10. In her rival submissions the Ld. Sr. DR strongly supported the orders of the authorities below and reiterated the observations made in their respective orders.

11. I have considered the submissions of both the parties and perused the material available on the record. In the present case the A.O. made the disallowance for the reasons that the assessee could not explain to his satisfaction that the interest paid on the loans was having any nexus with interest income earned under section 57 of the Act. On the contrary the claim of the assessee is that interest bearing funds were utilized for the business purposes and the interest paid in similar circumstances was allowed in the earlier year i.e 2012-13 by the ITAT vide order dt. 22/04/2019 in ITA No. 315/Chd/2017 in assessee's own case, copy of the said order was furnished which is placed on the record. However the said order was not available either to the A.O. or to the Ld. CIT(A), I therefore deem it appropriate to set aside this limited issue to the file of the A.O. to be adjudicated by keeping in view the observations given in the aforesaid order, in accordance with law.

12. Vide Ground No. 2 the grievance of the assessee relates to sustenance of disallowance of Rs. 2,01,874/- out of car expenses, depreciation, telephone and travelling expenses when the assessee himself had disallowed a sum of Rs. 1,74,371/- out of the above said expenses.

13. The facts related to this issue in brief are that the A.O. during the course of assessment proceedings noticed that the expenses incurred by the assessee were mixed in nature, he disallowed 1/5th of the expenses incurred by the assessee on Telephone, Car Repair, Car Insurance, Car Expenses and Depreciation as per following details:

Sr. No.	Particulars	Amount	1/5 th addition
1	Telephone Expenses	267081	Rs. 53416/-
2	Car Repair	58258	Rs. 11652/-
3	Car Insurance	160916	Rs. 32183/-
4	Car expenses	205522	Rs. 41104/-
5	Depreciation	1189447	Rs. 237889
	Grand Total	1881224	Rs. 376245/-

Since the assessee had himself disallowed a sum of Rs. 1,74,371/-, the difference of Rs. 2,01,874/- (Rs. 3,76,245.00 – Rs. 1,74,371.00) was added to the income of the assessee.

14. Being aggrieved the assessee carried the matter to the Ld. CIT(A) who sustained the disallowance by observing that the disallowance made @ 1/5th of the aforesaid expenses was not excessive.

15. Now the Assessee is in appeal.

16. The Ld. Counsel for the Assessee reiterated the submissions made before the authorities below and further submitted that the disallowance made by the A.O. and sustained by the Ld. CIT(A) was highly excessive.

17. In her rival submissions the Ld. Sr. DR strongly supported the orders of the authorities below.

18. I have considered the submissions of both the parties and perused the material available on the record. In my opinion in such type of cases the use of Telephone and Car for personal purposes cannot be ruled out, however the disallowance made by the A.O. and sustained by the Ld.CIT(A) @ 1/5th of the expenses appears to be excessive, I therefore to meet the ends of justice, deem it appropriate to restrict the disallowance to 1/10th of the expenses incurred by the assessee on Telephone, Car and depreciation instead of 1/5th worked out by the A.O. while restricting the above disallowance the A.O. should also give the benefit of the disallowance already made by the assessee at Rs. 1,74,371/-.

19. In the result, appeal of the Assessee is partly allowed for statistical purposes.

(Order pronounced in the open Court on 26/08/2019)

Sd/-
एन.के.सैनी,
(N.K. SAINI)
उपाध्यक्ष / VICE PRESIDENT

AG
Date: 26/08/2019

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File