

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH : BANGALORE**

**BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.1309/Bang/2018
Assessment years : 2015-16

IDRS Labs Pvt. Ltd., No.235-H, Phase 3, Hosur Road, Bommasandra Industrial Area, Bengaluru-560 099.	Vs.	The Dy. Commissioner of Income-tax, Circle-3(1)(1), Bengaluru
PAN – AADCI 0719 C		
<b>APPELLANT</b>		<b>RESPONDENT</b>

Appellant by	:	Shri Sudheendra B.R, Advocate
Respondent by	:	Smt. R Premi, JCIT (DR)

Date of hearing	:	22.10.2019
Date of Pronouncement	:	23.10.2019

**ORDER**

*Per B.R Baskaran, Accountant Member*

The appeal filed by the assessee is directed against the order dated 11/4/2018 passed by the 1d CIT(A)-III, Bengaluru and it relates to asst. year 2015-16.

2. The assessee is aggrieved by the decision of 1d CIT(A) in partially confirming the addition made by the AO u/s 40A(2)(a) of the Act.

3. The assessee is engaged in the business of conducting clinical research. The AO noticed that the assessee has paid interest of Rs.77.84 lakhs on the unsecured loan taken from Shri Yogesh Bhandari, one of the Directors of the company. The AO noticed that the assessee has paid interest @18% p.a on the above said loan. The AO considered the same as excessive. Accordingly he determined the fair market interest rate at 12% accordingly he disallowed a sum of Rs.25.95 lakhs out of interest expenses in terms of sec.40A(2)(a) of the Act. In the appellate proceedings, the Id CIT(A) determined the fair market rate of interest at 15.50% as against 12% adopted by the AO. Accordingly he directed the AO to compute the disallowance by adopting fair market rate of interest at 15.50% p.a. Still aggrieved, the assessee has filed this appeal before us.

4. The Id AR submitted that the AO can make disallowance u/s 40A(2)(a) of the Act provided he establishes that the payment made by the assessee to the related persons is in excess of fair market value. He submitted that the interest rate of 18% has been considered as fair market value by the Hon'ble Ahmedabad Bench of ITAT in the case of Viphul Y Mehata (ITA No.869/Amd/2010). Identical view has been taken in other cases also by the various benches of Tribunal. He submitted that the Hon'ble High Court of Kerala has also considered the rate of 18% to be reasonable in the case of Anand G Shah Vs. CIT (1990) 51 Taxman 29 (Ker).

5. On the contrary, the ld DR submitted that the decisions relied on by the assessee are related to the years, which are more than 10 years old to the year under consideration. She submitted that the fair market rate of interest fluctuates every year and hence the decisions relied upon by the assessee cannot be followed in this year. The ld DR further submitted that the ld CIT(A) has noticed that the assessee has availed secured loan from M/s Siemens Financial Services Pvt. Ltd., during the year under consideration at an interest rate of 14.50%. Since the loan taken by the assessee from the Director was unsecured one, the ld CIT(A) has fixed the fair market rate of interest at 15.50%. The ld DR submitted that the ld CIT(A) has taken support of data available with the assessee for the very same year and hence his order does not call for any interference.

6. We heard the rival contentions and perused the record. We noticed that the ld CIT(A) has decided the issue by making following observations.

*“4.3 The appellant also relied upon various decisions to argue that the interest paid . 18% was at market rate and as such could not have been treated as excessive,*

*4.4 The submissions of the appellant have duly been considered. A perusal of the various decisions quoted by the appellant shows that the same were rendered on the particular facts of those cases. There cannot be a fixed criteria for interest at the rate of 18% to be market rate for all the years. The interest rate would depend upon the market conditions prevailing during the relevant period when loan is taken. None of the decisions quoted by the appellant relate to F.Y. 2014-15. So as such these decisions cannot be applied to the*

*case of the appellant. However this is noted that during the year under consideration the appellant itself had taken a secured loan at the rate of 14.5% from Siemens Financial Services Private Limited. So this rate can be treated as benchmark i.e. the rate at which the appellant could have got secured loan. Since in the case under consideration the loan taken from the director is unsecured one, so the rate of interest on the same would be higher due to the risk premium. Considering above an interest rate of 15.5% per annum is considered to be the market rate for such unsecured loan as against 12% adopted by the AO. The AG is directed to adopt the rate of 15.5% per annum as the market rate of interest for computing disallowance under section 40A(2)b) of the Act. Considering above the ground of appeal 3 of the appellant is partly allowed.”*

7. There is no dispute with regard to the proposition that the fair market value of goods or services have to be substantiated by the tax authorities. We noticed that the ld CIT(A) has noticed the rate of interest paid by the assessee on the secured loan taken by it during the year under consideration was 14.50%. Hence the fair market rate of interest could be ascertained from the internal records of the assessee. Since the loan taken by the assessee was unsecured one, the Ld CIT(A) has determined fair market rate of interest at 15.50%. Before us, the assessee did not file any material to support its claim that the fair market rate of interest was 18% during the year under consideration. Accordingly, we have no other option but to confirm the order passed by the ld CIT(A).

8. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the Open Court on **23<sup>rd</sup> October, 2019.**

**Sd/-**  
**(Pavan Kumar Gadale)**  
**Judicial Member**

**Sd/-**  
**(B.R Baskaran)**  
**Accountant Member**

Bangalore,  
Dated, 23rd October, 2019.

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation .....
2. Date on which the typed draft is placed before the dictating Member .....
3. Date on which the approved draft comes to Sr.P.S .....
4. Date on which the fair order is placed before the dictating Member .....
5. Date on which the fair order comes back to the Sr. P.S. ....
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so .....
8. Date on which the file goes to the Bench Clerk .....
9. Dictation note enclosed
10. Date on which order goes for Xerox & endorsement.....
11. Date on which the file goes to the Head Clerk .....
12. The date on which the file goes to the Assistant Registrar for signature on the order .....
13. The date on which the file goes to dispatch section for dispatch of the Tribunal Order .....
14. Date of Despatch of Order. ....
14. Dictation note enclosed .....