

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC' NEW DELHI**

BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER

I.T.A. No.1411/Del/2015
Assessment Year: 2011-12

M/s Panarc Consulting Group Pvt. Ltd., 304, 3 rd Floor, Times Centre Building, Golf Course Road, New Delhi (PAN:AAFCEP4288H) (ASSESSEE)	vs.	Income Tax Officer, Ward-19(3), New Delhi (RESPONDENT)
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Assessee by: Sh. K Sampath, Advocate
Sh. V. Raja Kumar, Advocate
Revenue by: Sh. Manoj Kumar Chopra, Sr. DR.

ORDER

This appeal is filed by the assessee against the Order dated 26.12.2014 passed by the Ld. CIT(A)-7, Delhi, relating to Assessment Year 2011-12 on the following grounds of appeal:-

- "1. The authorities below erred in passing the order without appreciating neither the facts of the case nor the decided case brought to their notice and thus the order suffers from the principles of judicial discipline and is liable to be vacated and addition deleted.*
- 2. The Ld. CIT (Appeals) erred in confirming the addition of Rs.6,17,315/- being the amount of interest paid on share application money to Shri Arvind Raj Arora and Shri Gaurav Markende on the facts and circumstances of the case. The disallowance has been confirmed by the Ld. CIT (Appeals) on wrong premises and without following the principles laid down in the case of Rohit Exhaust Systems Pvt Ltd M Department of Income Tax, ITAT, Pune and Deputy Commissioner of Income Tax vs M/s Manipal Industries Limited*
- 3. The Ld. CIT (Appeals) erred in confirming the disallowance of Rs.6,50,000/- being the amount of consultancy charges paid to Shri Arvind Raj Arora on the facts and circumstances of the case.*

4. The Ld. Authorities below erred in not appreciating the fact that the interest and consultancy charges so paid to Shri Arvind Raj Arora were declared by him in his income tax return and tax at the rate of 30% and as such no useful purpose was being served by the department in making a disallowance on such facts.

Without prejudice to ground no. 2 and 3 above directions may be issued to the authorities below to exclude the amount Rs. 6,17,315/- and Rs. 6,50,000/- from the total income of the directors on the principle that the same income cannot be taxed twice."

2. I have heard both the parties, perused the orders passed by the Revenue authorities, including the paper book filed by the learned counsel for the assessee containing pages 1 to 38 in which the learned counsel for the assessee has filed a copy of letter dated 22.02.2013 before the AO alongwith select documents, copy of letter dated 07.11.2013 before AO alongwith Form 26-AS and other documents, copy of letter dated 20.11.2013 before alongwith returns, bank statement and profile of key personnel, copy of Show Cause Notice dated 10.01.2014 and copy of letter dated 20.01.2014 before AO. The learned counsel for the assessee also certified that the said papers are part of record before the Assessing Officer. Learned counsel for the assessee has stated that the assessee has filed all the documentary evidences for substantiating the claim of assessee which has not been properly considered by the Revenue authorities. He requested that as regards to issue involved in ground no. 1 relating to addition of Rs. 617315/- on account of interest paid on share application money to Shri. Arvind Raj Arora and Shri. Gaurav Markande. He stated that this issue has already been decided in favour of the assessee by the ITAT Delhi Benches "SMC" Bench, New Delhi in ITA No.

1411/Del/2015 dated 13.07.2016. He draw my attention towards para 4 page no. 2 of the aforesaid order dated 13.07.2016. He stated that the Revenue authorities has not filed any contradictory evidence to negative this order. He requested that this addition of Rs. 617315/- may be deleted, in view of the reasoning mentioned in the order dated 13.07.2016. As regards to second addition regarding disallowance of Rs. 6,50,000/- on account of consultancy charges paid to Shri. Arvind Raj Arora. Learned counsel for the assessee stated that this issue requires thorough consideration at the level of Assessing Officer because the assessee has filed all the documentary evidences supporting this claim which has not been properly considered by the Revenue authorities.

3. Learned DR relied upon the orders passed by the Revenue authorities.

4. After hearing both the parties and perusing the orders passed by the authorities below, I am of the view that as regards to the addition of Rs. 06,17,315/- on account of interest paid to Shri. Arvind Raj Arora and Shri. Gaurav Markande, the Revenue authorities has disallowed this claim on account of non furnishing of evidences of supportive documents in support of the claim and assessee could not allot securities within the stipulated period of 60 days and the interest was paid @ 12% per annum, in view of the notification of the Ministry of Company Affairs dated 14.12.2011 as reproduced at Page No. 3 & 4 of the impugned order.

5. I have gone through the provision of section 36(1)(iii) of the Act. This section allows deduction to the assessee in respect of amount of the

interest paid on the capital borrowed for the purpose of the business or profession. This section, nowhere restricts the disallowance in respect of interest paid on the share application money. The share application money until the shares are not allotted, is capital, borrowed for the purpose of the business or profession. Until and unless, there is an embargo and restriction under section 36(1)(iii), in my opinion, no disallowance can be made in respect of interest paid on the share application money. Until and unless the shares are allotted, the share application money can be refunded to the persons from whom the money has been received, thus it remains in shape of capital borrowed.

6. Keeping in view, the facts and circumstances explained above, I delete the disallowances amounting to Rs. 617315/- on account of interest paid on share application money to Shri. Arvind Raj Arora and Shri. Gaurav Markande. In the result, issue involved in ground no. 2 is decided in favour of the assessee.

7. As regards to the disallowance of Rs. 6,50,000/- being amount of consultancy charges paid to Shri. Arvind Raj Arora, I am of the considered view that assessee has filed all the documentary evidences before the Revenue authorities which has not been properly considered. Therefore, in the interest of justice this issue is set aside to the Assessing Officer to decide the same afresh, as per law, after giving full opportunity of hearing to the assessee and for producing the evidence and decide the same in as per law.

8. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on 15/01/2020.

**Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER**

Date: 15/01/2020
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Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches