

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC-2" : DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.5245/Del./2019
Assessment Year 2015-2016

M/s. SKG Wooden Works Pvt. Ltd., C-7/3, 3 rd Floor, Vasant Vihar, New Delhi PIN – 110 057 PAN AAFCS2457M	vs.	The Income Tax Officer, Ward – 23 (4), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Ved Jain, Advocate. Shri Ashish Goel, C.A. Ms. Surbhi Goyal, C.A.
For Revenue :	Shri R.K. Gupta, Sr. D.R.

Date of Hearing :	07.07.2020
Date of Pronouncement :	07.07.2020

ORDER

This appeal by the Assessee has been directed against the Order of the Ld. CIT(A)-XXV, New Delhi, Dated 27.05.2019, for the A.Y. 2015-2016, challenging the disallowance of Rs.7,53,425/- on account of interest paid to M/s. Oswal Greentech Limited under section 36(1)(iii) of the I.T. Act, 1961.

2. I have heard the Learned Representative of both the parties through video conferencing and perused the findings of the authorities below.

3. Briefly the facts of the case are that assessee company filed return of income declaring loss of Rs.1,898/-. During the year under consideration, there was no business activity carried-out by the assessee company. However, as per page-42 of notes on financial statement for the end of the financial year, it is mentioned that assessee company is engaged in the construction and renovation work on contract basis. The A.O. noticed that assessee had debited an amount of Rs.7,53,425/- on account of interest paid to M/s. Oswal Greentech Limited. Copy of the inter corporate deposit agreement in this regard was furnished by assessee which confirm the same fact that assessee has lend a sum of Rs.10 crores for business requirements. The A.O. show caused the assessee as the loan was given for the business requirements of assessee whereas the same was utilised for the purpose of investment in shares, why the same should not be disallowed. The assessee, however, explained that as

per loan agreement the amount was invested in subsidiary companies for the purpose of business. The A.O, however, did not accept the contention of assessee and made the addition by disallowing the interest. The Ld. CIT(A) in the absence of assessee dismissed the appeal of assessee.

4. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and filed written synopsis also. He has explained that assessee filed replies before the authorities below along with details to show that amount was invested in subsidiary for business purposes which is supported by bank statements, copy of inter corporate deposit agreement with M/s. Oswal Greentech Limited, copy of the ledger of interest paid in the books of the assessee company and copy of the Memorandum and Articles of assessee company. He has submitted that assessee company took loan of Rs.5 crores from M/s. Oswal Greentech Limited for the purpose of business expansion and paid the impugned interest on such loan. However, during the year under consideration assessee could not find a suitable opportunity, therefore,

utilised the said amount for investing in shares of subsidiary namely Cresco Futures Limited on 06.02.2015 to the extent of Rs.492.55 lakhs and balance Rs.7.55 lakhs was invested in share capital of Saan Commodities Pvt. Ltd., on 14.02.2015. It was also submitted before the authorities below that the amount was invested as a measure of commercial expediency. The assessee further explained that the real test to determine if the amount has been used for the purpose of business as if the amount has been used as a measure of commercial expediency or not. Learned Counsel for the Assessee relied upon judgment of the Apex Court in the case of SA Builders Ltd vs., CIT [2007] 288 ITR 1 (SC) in support of his argument that the term '*for the purpose of business*' as provided under section 36(1)(iii) includes amount spent as a measure of commercial expediency and therefore, the interest paid on loan should be allowable. He has submitted that during the assessment proceedings assessee submitted copy of the Memorandum of Association of the Company before the A.O. and one of the objects which is incidental or ancillary to the attainment of

the main objects of the assessee includes the activity of investment in shares of another company which is reproduced in the written synopsis. He has, therefore, submitted that since the investment in share is one of the objects of the assessee company, the investment in another company is to be treated as business activity of the assessee company and would be covered under the scope of "*for the purpose of business*" and assessee would qualify for deduction under section 36(1)(iii) of the I.T. Act, 1961. He has submitted that with regard to issue of commercial expediency is concerned, the decision shall have to be taken by the assessee and not by the A.O. He has also referred to other decisions of the Tribunal.

5. The Ld. D.R, on the other hand, relied upon the Orders of the authorities below and submitted that since loan was invested in shares of other company, therefore, assessee would not be entitled for deduction of interest.

6. I have considered the rival submissions and do not find any justification to sustain the addition. The

assessee filed the above documentary evidences before A.O. to show that assessee has inter corporate deposit agreement with M/s. Oswal Greentech Limited and one of the clause of the Memorandum of Articles of Association of assessee company is to make investments also in subsidiary. The facts, therefore, would clearly show that for commercial expediency the assessee has made investment in shares of the subsidiary company and as such, the amount invested shall have to be considered that amount is invested for business purposes and for commercial expediency. The issue is, therefore, covered in favour of the assessee by the Judgment of Hon'ble Supreme Court in the case of S.A. Builders (supra). The assessee, thus, has fulfilled the conditions of Section 36(1)(iii) of the I.T. Act, 1961. I, accordingly, set aside the Orders of the authorities below and delete the entire addition.

7. In the result, appeal of Assessee allowed.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 07th July, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC-2' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.