

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G' NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

AND

SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA No. 234/Del/2016

Assessment Year: 2012-13

SH. SURRENDER KUMAR BHURARIA, PROP. M/S SHIVA METAL TRADERS, KANOD GATE, DISTT. REWARI, HARYANA (PAN : ACTPB2703N)	Vs.	ITO, WARD-2, REWARI
(Appellant)		(Respondent)

Appellant by	Sh. Gurjeet Singh, CA & Sh. Rajesh Jain, Adv.
Respondent by	Sh. K. Tiwari, Sr. DR

ORDER

PER H.S. SIDHU, JM:

The assessee has filed this appeal against the order dated 16.11.2015 passed by the Ld. CIT(A)-2, Gurgaon pertaining to assessment year 2012-13 on the following grounds:-

1. Because the action is being challenged on facts and law, while invoking the provisions of section 36(1)(iii), while

making a proportionate disallowance of Rs. 37,17,140/- at an arbitrary rate of 13.25% which is defeating the test of nexus, purpose, character as requiring findings while determining the commercial expediency and business exigencies.

2. Because the quantum of disallowance and the rate of interest invoked for the said disallowance are both under challenge alongwith the quantum thereof.
3. Because the action is being under challenge on facts and law, while not taking into consideration the additional evidences of whatsoever kind which are the material facts containing material particulars to the present case.
4. Because the disallowance of Rs. 13,779/- (1/6th of Rs. 82,673/-) attributable to personal usage is being challenged on the facts and law since the said disallowance is excessive and unreasonably made.

Prayer:

For any consequential relief and / or legal claim arising out of this appeal and for any addition, deletion, amendment and modification in the grounds of appeal before the disposal of the same in the interest of substantial justice to the assessee.

2. The brief facts of the case are that assessee filed its return on 20.09.2012 declaring income of Rs. 19,53,540/-. The assessee is engaged in the business of trading ferrous and non-ferrous metal. During the course of assessments proceedings the AO noted that the

assessee had shown following amounts as sundry debtors on account of advance to related parties:-

- (i) M/s Pride Sales Corporation. Delhi (Sh. Prateek Bhuraria son of the assessee is a proprietor. - Rs. 14,50,000/-.
- (ii) M/s S.K. Enterprises, Delhi (Smt. Laxmi Bhuraria wife of the assessee is a proprietor - Rs. 48,50,000/-.
- (iii) M/s Luxmi Trading & Manufacturing Co. Rewari (Brother of appellant is one of the partner of the firm)- Rs. 1,70,41,310/-.

2.1 The AO further, noted that there was no business transaction with either of the three concerns except one sale transaction of Rs. 19,42,478/- with M/s Laxmi Trading and Manufacturing Company. The AO accordingly was of the view that these amounts were in fact advances made to his sister concerns and accordingly issued a show cause notice to the assessee to explain why interest on these advance may not be disallowed as no interest had been charged on these advance given to related persons. After considering the assessee's submissions on this issue the AO pointed out that the assessee had himself admitted that these amounts were advances given to related

parties to clear the trade debts (outstanding amount) of other parties dealing with these concerns . The AO accordingly held that the assessee had tried to intentionally camouflage the transaction by putting the name of these firm under the head sundry debtors but actually these are loans and advances by the appellant to his sister concerns and that too interest free. The AO held that it was evident that the amounts were advanced by the appellant to its related parties to repay the liability of 3rd party which was a non business purpose. The AO referred to the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT Vis Abhishek Industries (286 ITR 1) (2006) and decision of the Hon'ble Madras High Court in the case Somasundram & Bros. V/s CIT (238 ITR 939) (1999) and held that the proportionate interest on these advance was required to be disallowed on the ground that this interest was not for the purpose of business. The AO computed the interest on day to day outstanding balance in each case @ 13.25 pa and accordingly made a disallowance of Rs. 37,17,140/- and made the addition of Rs. 20,688/- being $\frac{1}{4}$ of Rs. 82,673/- on account of personal usage and assessed the income of the assessee at Rs. 56,91,350/- vide order dated 27.02.2005 passed u/s. 143(3) of the Act.

3. Against the aforesaid order of the AO, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 16.11.2015 has partly allowed the appeal of the assessee and upheld the addition of Rs. 37,17,140/- and restrict the addition of Rs. 20,688/- to Rs. 13,799/- (being 1/6th of Rs. 82,673/-).

4. Aggrieved with the aforesaid order, the Assessee is in appeal before the Tribunal.

5. At the time of hearing, Ld. Counsel of the assessee has reiterated the submissions made before the Ld. CIT(A) and also reiterated the contentions raised in the grounds of appeal. He stated that the advance in dispute were given to the sister concerns as on 31.3.2011 and 31.3.2012. He further stated that the audited balance sheet for the year ending 31.3.2011 and 31.3.2012 exhibits that the assessee has sufficient interest free funds (own funds / interest free loan/sundry creditors) to provide loan / advance to sister concerns. As on 31.3.2011 the assessee has given interest free advances to sister concern amounting to Rs. 1,98,64,866.85 out of own funds amounting to Rs. 38,01,36,440.98 which is far in excess of advances to sister concerns. He further stated that assessee has given fresh advances amounting to Rs. 48,50,000/- to M/s SK Enterprises & Rs. 14,50,000/- to M/s Pride Sales Corporation (Totaling Rs. 63,00,000/-) during the impugned AY 2012-13 out of own funds amounting to Rs. 18,60,06,299.47 (Rs. 18.60 cr.) which too is far in excess of advances to sister concerns. He further stated that interest free advances are from own funds as the loan

amount as on 31.3.2012 has been reduced by Rs. 11,34,102/- too. He draw our attention towards the AO's assessment order in assessee's own case for the preceding year i.e. AY 2011-12 (Page no. 139-141 of PB) and stated that no addition u/s. 36(1)(iii) has been made in the assessment passed u/s. 143(3) of the Act. He further stated that since no addition has been made in earlier years, the opening balance could not be considered in the year in question for the purpose of computation of disallowance. He further stated that Ld. CIT(A) Rohtak vide his order dated 11.4.2017 (Page 35-41 of PB) allowed the assessee's appeal for the succeeding assessment year i.e. AY 2013-14, on the same issue of Section 36(1)(iii) relating to same parties considering assessee's submissions. In view of above, Id. Counsel of the assessee requested to delete the additions in dispute and in order to support his contention he relied upon following case laws:-

- CIT vs. Punjab Wool Combers Ltd. ITA No. 7 of 2004 dated 9.9.2010 (P&H)
- CIT vs. Max India Ltd. ITA No. 219/2013 dated 8.3.2017 (P&H)
- Bright Enterprises (P) Ltd. CIT (2016) 381 ITR 107 (P&H).
- CIT vs. Reliance Utilities & Power Ltd. (2009) 313 ITR 340 (Mum)
- Hero Cycles (P) Ltd. vs. CIT Civil Appeal No. 514 of 2008 (SC)

6. On the contrary, Ld. DR relied upon the orders of the authorities below and relied upon the following case laws, but he could not controvert the contention of the assessee's counsel that as to why in the preceding year the AO has allowed the same relief to the assessee and as to why Ld. CIT(A) in succeeding year has allowed the appeal of the assessee on the similar additions.

- Punjab Stainless Steel Inds. Vs. CIT (2011) 186 Taxman 404 (Del)
- Thukral Regal Shoes vs. CIT (2016) 72 taxmann.com 192 (Punjab & Haryana High Court)
- Abhishek Industires vs. CIT (2006) ` 156 Taxmann 257 (Punjab & Haryana).
- CIT vs. R. Mohan (2011-TIOL-687-HC/MAD-IT)
- CIT vs. Cornerstone Exports P Ltd. (2016) 67 taxmann.com 345 (Gujarat)
- CIT vs. Cornerstone Exports (P) Ltd. (2016) 238 Taxman 465. - Hon'ble Gujarat High Court.
- Narasu's Spinning Mills vs. ACIT (2016) 157 ITD 512. - ITAT, Chennai.
- Abhishek Industries Ltd. (2006) 156 Taxmann 257 (P&H).
- CIT vs. R. Mohan (2011)-TIOL-687-HC-MAD-IT.

- Punjab Stainless Steel Inds. Vs. CIT (2011) 196 Taxman 404 – Delhi High Court.

7. We have heard both the parties and perused the records, especially the impugned order passed by the Ld. CIT(A) and the contentions raised by both the parties. We note that the advance in dispute were given to the sister concerns as on 31.3.2011 and 31.3.2012 and the audited balance sheet for the year ending 31.3.2011 and 31.3.2012 exhibits that the assessee has sufficient interest free funds (own funds / interest free loan/sundry creditors) to provide loan / advance to sister concerns. We note that as on 31.3.2011 the assessee has given interest free advances to sister concern amounting to Rs. 1,98,64,866.85 out of own funds amounting to Rs. 38,01,36,440.98 which is far in excess of advances to sister concerns. We further note that assessee has given fresh advances amounting to Rs. 48,50,000/- to M/s SK Enterprises & Rs. 14,50,000/- to M/s Pride Sales Corporation (Totaling Rs. 63,00,000/-) during the impugned AY 2012-13 out of own funds amounting to Rs. 18,60,06,299.47 (Rs. 18.60 cr.) which too is far in excess of advances to sister concerns and the interest free advances are from own funds as the loan amount as on 31.3.2012 has been reduced by Rs. 11,34,102/-. On going through the AO's assessment order in assessee's own case for the preceding year i.e. AY 2011-12 (Page no. 139-141 of PB) it was noted that no addition u/s. 36(1)(iii) has been made in the assessment passed u/s. 143(3) of the Act and also on perusal of the Ld. CIT(A)'s order in AY 2013-14, we note that Ld. CIT(A) Rohtak vide his order dated 11.4.2017 (Page 35-41 of PB) has allowed the assessee's appeal for the succeeding assessment year i.e. AY 2013-14, on the same issue of Section

36(1)(iii) relating to same parties considering assessee's submissions. Keeping in view of the facts and circumstances of the case and following the principle of consistency, the addition of Rs. 37,17,140/- in dispute is deleted.

7.1 As far as the addition on account of telephone expense is concerned, we note that no specific finding has been made to indicate that the expenses incurred could have been of a personal nature, therefore, we delete the same.

8. In the result, the appeal of the Assessee is allowed.

Order pronounced on 15/05/2018

Sd/-

**[O.P. KANT]
ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date: 15/05/2018

SR Bhatnagar

Copy forwarded to: -

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

Assistant Registrar, ITAT, Delhi Benches