

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “ए”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH ‘A’, CHANDIGARH

श्री संजय गर्ग, न्यायकि सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SHRI SANJAY GARG, JM & SMT. ANNAPURNA GUPTA, AM

आयकर अपील सं./ ITA No.100/Chd/2017

निर्धारण वर्ष / Assessment Year : 2012-13

M/s Chadha Super Cars Pvt. Limited, Village Bhanohar, Opp. Hawell Restaurant Mullanpur, Ferozpur Road, Ludhiana.	बनाम	The A.C.I.T., Circle-V, Ludhiana
स्थायी लेखा सं./PAN NO.AABCC6944R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Amandeep Vats, CA
राजस्व की ओर से/ Revenue by : Smt.Chanderkanta, Sr.DR
सुनवाई की तारीख/Date of Hearing : 09.10.2018
उद्घोषणा की तारीख/Date of Pronouncement: 08 .01.2019

आदेश/ORDER

Per Annapurna Gupta, Accountant Member:

The present appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-2, Ludhiana (in short ‘CIT(A)’ dated 19.11.2016 passed u/s 250(6) of the Income Tax Act, 1961 (hereinafter referred to as ‘Act’).

2. Ground Nos.1 and 2 raised by the assessee relate to disallowance of interest u/s 36(1)(iii) of the Act and read as under:

- “1. That the Learned Commissioner of Income Tax (Appeals)-2, Ludhiana has erred in sustaining the addition of Rs.48,329/- made u/s 36 (1) (iii) of the Income Tax Act, 1961 by the Ld. Assistant Commissioner of Income Tax Circle-V, Ludhiana on

account of amount advanced to M/s Nikkamal Jewellers for purchase of Coins, requiring for Diwali Pooja without considering the reply filed by the assessee during the course of assessment proceedings as well as during the course of appellate proceedings and without considering the facts of the case, Therefore, addition of Rs.48,329/- made by the Ld. Assistant Commissioner of Income Tax Circle-V, Ludhiana on account of amount advanced to M/s Nikkamal Jewellers and sustained by the Learned Commissioner of Income Tax (Appeals)-2, Ludhiana is illegal, unwarranted, uncalled for and may be deleted.

2. *That the Learned Commissioner of Income Tax (Appeals)-2, Ludhiana has erred in sustaining the disallowance of Interest of Rs.4,69,863/- made u/s 36 (1) (iii) of the Income Tax Act, 1961 by the Ld. Assistant Commissioner of Income Tax Circle-V, Ludhiana on account of loans given to various parties and interest charged from them at 9% and the Ld. Assessing Officer estimating that the Interest to be charged from parties @ 12% and making the addition at 3% on loans advanced to various parties without considering the reply filed by the assessee during the course of assessment proceedings as well as during the course of appellate proceedings and without considering the facts of the case whereas, loans to the various parties were advanced out of the "Current Account" against the sale proceeds of the business were credited Therefore, disallowance of interest of Rs.4,69,863/- made by the Ld. Assistant Commissioner of Income Tax Circle-V, Ludhiana on account of loans advanced to various parties and sustained by the Learned Commissioner of Income Tax (Appeals)-2, Ludhiana is illegal, unwarranted, uncalled for and may be deleted."*

3. Briefly stated, the A.O. noted that the assessee had made advances to one M/s Nikkamal Jewellers Pvt. Ltd. amounting to Rs.10 lacs which had remained outstanding during the year for a period of 147 days. The A.O. asked the assessee to explain why proportionate disallowance of interest be not made on the said interest free advance, to which the assessee replied that the advances had been made on account of purchase of gold coins for the purpose of pooja for Diwali and had been given, therefore, in the ordinary

course of business. The A.O. was not satisfied with the explanation of the assessee and accordingly made disallowance of proportionate interest @ 12% on the impugned advance which came to Rs.48,329/-.

The A.O. further noted that the assessee had made advance to many other parties and charged interest @ 9% as under:

<i>Name (S./Shri/Smt/Mrs.</i>	<i>Amount (in Rs.)</i>	<i>Interest charged</i>	<i>Period</i>
<i>Rahul Sales</i>	<i>44,67,207/-</i>	<i>Nil</i>	<i>365 days</i>
<i>Renny Steel Castings</i>	<i>10,00,000/-</i>	<i>9%</i>	<i>365 days</i>
<i>Renny Strips Pvt. Ltd.</i>	<i>49,00,000/-</i>	<i>Nil</i>	<i>365 days</i>
<i>Amit Kumar</i>	<i>10,01,973/-</i>	<i>9%</i>	<i>365 days</i>
<i>Janak Raj</i>	<i>20,36,962/-</i>	<i>9%</i>	<i>365 days</i>
<i>Pawan Kumar</i>	<i>16,40,055/-</i>	<i>9%</i>	<i>36/5 days</i>
<i>Advent Impex</i>	<i>11,35,468/-</i>	<i>9%</i>	<i>365 days</i>
<i>A.V. Engineering Industries</i>	<i>11,20,000/-</i>	<i>9%</i>	<i>365 days</i>
<i>Kamaldeep</i>	<i>3,36,000/-</i>	<i>9%</i>	<i>365 days</i>
<i>Rajnish Enterprises</i>	<i>11,35,468/-</i>	<i>9%</i>	<i>365 days</i>
<i>Ravi Nandan Kumar</i>	<i>23,61,515/-</i>	<i>9%</i>	<i>365 days</i>
<i>Rajnish Ahuja</i>	<i>38,94,653/-</i>	<i>9%</i>	<i>365 days</i>
<i>Total</i>	<i>2,50,29,301/-</i>		

4. The A.O. asked the assessee why proportionate interest be not disallowed u/s 36(1)(iii) of the Act since the advances had been made at lower rate of interest as compared to the rates charged by banks on loans taken. The assessee explained that no borrowed funds had been used for the purpose of making these advances and that the entire advances had been made from the current account of the

assessee. Not being satisfied with the reply of the assessee the A.O. held that there were mixed funds available with the assessee and no commercial expediency had been established for the purpose of making these advances. He, therefore, disallowed the short interest charged on these advances @ 3% by taking appropriate rate of interest @ 12% and made a disallowance of interest amounting to Rs.6,26,484/-.

5. Aggrieved by the same, the matter was carried in appeal before the CIT(A) who upheld the disallowances made following the decision of the Hon'ble Jurisdictional High Court in the case of CIT Vs. Abhishek Industries Ltd., 286 ITR 1.

6. The assessee has now come up in appeal before us challenging the disallowance of interest made pertaining to advances given to M/s Nikkamal Jewellers and other parties as stated above. Before us, the Ld. counsel for assessee drew our attention to the submissions filed before the CIT(A), laced at Paper Book page No.A-1 to A-60 and to the supporting evidences filed from page NO.1 to page No.183. Referring to the same,, the Ld. counsel for assessee stated that the assessee had sufficient own interest free funds in the form of share capital, reserves and surplus which far exceeded the loans and advances made and it was these funds which had been utilized for giving the impugned loans since all the advances had been made from the current account of the assessee which carried no interest. Drawing

our attention to the funds available with the assessee it was pointed out that the share capital and reserves for the impugned year stood at Rs.78,35,750/- and Rs.8,46,25,794/- respectively. It was pointed out that the profits during the year were Rs.2,45,50,893/- which were more than sufficient for making the impugned advances amount in all to Rs.2.60 crores. Our attention was also drawn to the copy of account of these parties and also copies of bank account showing that all the advances had been made from the current account of the assessee where all trading receipts were deposited. It was further pointed out that the interest bearing funds of the assessee were specific purpose loans which were used for the said purpose and not for giving any of the impugned advances. Our attention was drawn to the Balance Sheet of the assessee for the impugned year, placed at Paper Book page Nos.300 and 301 pointing out therefrom that all the long term borrowings related to car loans taken from banks and other term loans taken from banks and investment funding loans taken, which were all specific purpose loans and were used for the said purpose. It was, therefore, contended that the disallowance of interest made was against the law and facts of the case and ought to be deleted.

7. The Ld. DR, on the other hand, relied upon the orders of the lower authorities stating that there were mixed funds available with the assessee and, therefore, disallowance of proportionate interest have been rightly done considering the

fact that the business expediency for making the impugned advances had not been demonstrated by the assessee.

8. We have heard the rival contentions. We find merit in the contention of the assessee. Admittedly, the assessee had demonstrated to the lower authorities that the impugned advances had been made from its current account on which no interest was being paid. It was also demonstrated that the assessee had more than sufficient interest free funds in the shape of share capital and reserves amounting to Rs.78,35,750/- and Rs.8,46,25,794/- respectively and its profits during the year, loan amounting to Rs.2,45,50,893/- and further the impugned advances amounted to Rs.2.60 crores. All the above facts have not been controverted by the Revenue. In view of the same, it stands sufficiently established that the assessee had sufficient own interest free funds and it was these funds which had been used for making the impugned advances which is evident from the fact that all the trading receipts, which were interest free in nature, were deposited in the current account of the assessee and it was out of this current account that the advances had been made. Undoubtedly, therefore, it stands established that the assessee had used interest free funds for making the impugned advances and, therefore, there was no occasion for making any disallowance of interest u/s 36(1)(iii) of the Act. Considering the above facts, there is no merit in the contention of the Revenue that the mixed funds were

available with the assessee and, therefore, the proportionate interest needed to be disallowed. In fact, in the present case, the assessee has established the nexus between the interest free funds and their deployment for the advances made. Therefore, the mixed funds theory cannot be brought into operation or applied in the present case. In view of the above, the disallowance made of interest u/s 36(1)(iii) of the Act amounting to Rs.48,329/- & Rs.4,69,863/- is deleted . The ground of appeal Nos.1 and 2 are accordingly allowed.

9. Ground of appeal Nos. 3 and 4 raised by the assessee relate to disallowance of expenses made for the purpose of earning exempt income as per the provisions of section 14A of the Act and read as under:

“3. That the Learned Commissioner of Income Tax (Appeals)-2, Ludhiana has erred in sustaining the addition of Rs.64,07,002/- made u/s 14A of the Income Tax Act, 1961 by the Ld. Assistant Commissioner of Income Tax Circle-V, Ludhiana without considering the reply filed by the assessee during the course of assessment proceedings as well as during the course of appellate proceedings, whereas section 14A is not applicable in the case of assessee. Therefore, addition of Rs.64,07,002/- made by the Ld. Assistant Commissioner of Income Tax Circle-V, Ludhiana and sustained by the Learned Commissioner of Income Tax (Appeals)-2, Ludhiana is illegal, unwarranted, uncalled for and may be deleted.

4. *That the Learned Commissioner of Income Tax (Appeals)-2, Ludhiana, without any prejudice to above stated grounds has erred in sustaining the addition of Rs.64,07,002/- made u/s 14A of the Income Tax Act, 1961 by the Ld. Assistant Commissioner of Income Tax Circle-V, Ludhiana after ignoring the facts of the case that the calculation of disallowance u/s 14A is not in accordance with the provisions of Law where the additions should be restricted to the extent of exempt income as held Hon'ble Jurisdictional High Court in the case of CIT Vs. Mascot Footcare in ITA*

No.67 of 2009 (O &M) dated 2.4.2014 and by the Jurisdictional appellate tribunal i.e. Hon'ble bench of ITAT Chandigarh in the case- of M/s Aarti Steels Limited Vs. DCIT [ITA No. 268/CHD/2015] dated 30/11/2015 [A.Y. 2009-10] and also interest paid on loan taken by assessee for specific purposes are not to be included while calculating amount u/s 14A of the Income Tax Act, 1961. Therefore, addition of Rs.64,07,002/- made by the Ld.Assistant Commissioner of Income Tax Circle-V, Ludhiana and sustained by the Learned Commissioner of Income Tax (Appeals)-2, Ludhiana is illegal, unwarranted, uncalled for and may be deleted.”

10. Brief facts relating to the issue are that the A.O. noted that the assessee had shown investments of Rs.9,70,32,778/- as on 31.3.2012. The income from these investments was not taxable. The details of the said investments are as under:

PARTICULARS	AMOUNT (In Rs.)
CHADHA MOTORS	9,13,90,778/-
DSP BLACK ROCK EQUITY FUND	3,92,000/-
HDFC MUTUAL FUND-TOP 200	2,50,000/-
RENNY STRIPS PVT LTD	50,00,000/-
TOTAL	9,70,32,778/-

11. The A.O. observed that the expenditure incurred in relation to these investments was required to be disallowed u/s 14A of the Act. The assessee contended that the investment in Chadha Motors amounting to Rs. 9,13,90,778/- was in the form of capital by a partner from which no taxable income had been distributed to the partners since it had made losses during the year. The assessee contended therefore that no disallowance u/s 14A was required to be made. The A.O. was not satisfied with the contention of the assessee. He referred to the decision of the Hon'ble ITAT in assessee's own case for assessment year 2008-09 where the disallowance u/s 14A had confirmed. The

A.O. observed that the claim of the assessee that the investment in partnership firm, M/s Chadha Motors, does not merit disallowance u/s 14A had been dealt in depth by Hon'ble ITAT, Chandigarh in assessee's own case and had decided the issue in favour of the revenue. The A.O. accordingly worked out the disallowance u/s 14A r.w.r. 8D at Rs.64,07,002/-.

12. The Ld.CIT(A) upheld the disallowance made by the A.O.

13. Before us, the Ld. counsel for assessee reiterated the contention made before the lower authorities that no exempt income had been earned from the impugned investments made since the investment made in the partnership concern had returned loss and therefore no disallowance of expenses u/s 14A of the Act was warranted. The Ld. counsel for assessee further contended that in its own case for assessment year 2011-12 the I.T.A.T. had restricted the disallowance of expenses u/s 14A of the Act to the extent of exempt income earned. Copy of the order was placed before us.

14. The Ld. DR, on the other hand, relied upon the orders of the lower authorities.

15. We have heard the rival contentions and find merit in the contention of the Ld. counsel for assessee. It is settled law that the disallowance of expenses u/s 14A of the Act cannot exceed the quantum of exempt income earned and consequently where no exempt income is earned, no disallowance of expenses can be made. This proposition of

law has been laid down by the Hon'ble Jurisdictional High Court in the case of CIT Faridabad Vs. Lakhani Marketing Inc. Ltd., 226 Taxman 45 (P&H) and also by the Hon'ble Delhi High Court in the case of Chemninvest Ltd. Vs. ITO (2015) 378 ITR 33. In view of the same since no exempt income has been earned by the assessee during the year, which fact has been reiterated time and again before the lower authorities and has remained uncontroverted and which has also been demonstrated by showing that the major investment of Rs.9 crores made in the partnership firm has returned loss, we held that no disallowance of expenses is warranted in the present case u/s 14 A of the Act. The disallowance so made of Rs.64,07,002/- is, therefore, directed to be deleted. In view of the above, ground Nos.3 and 4 stand allowed.

16. In the result, the appeal of the assessee is, therefore, allowed.

Order pronounced in the Open Court.

Sd/-

संजय गग

(SANJAY GARG)

न्यायकि सदस्य/ Judicial Member

दिनांक /Dated: 8th January, 2019

रती

Sd/-

अन्नपूर्णा गुप्ता

(ANNAPURNA GUPTA)

लेखा सदस्य/ Accountant Member

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

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar

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