

through the Balance sheet of the assessee company, the Assessing Officer (AO) observed that it had given loans and advances to Hekre Developers (advance for property – Rs.11.00 lakh); Mohit kumar Narang (advance for property – Rs.5.00 lakh); Shri Ganesh Apartment (flat – Rs.15,000/-); and Shubhada Ranadive (Company guest house – Rs.2,50,000). The AO applied notional interest rate of 12% and made addition of Rs.2,23,800/-. The Id. CIT(A) deleted the addition of interest in respect of advance for property given to Hekre Developers at Rs.11.00 lakh. For the remaining amounts, he confirmed the addition at Rs.91,800/-, against which the assessee has come up in appeal before the Tribunal.

4. I have heard both the sides and gone through the relevant material on record. The Balance sheet of the assessee is available at page 83 of the paper book. It can be seen that the assessee's share capital along with Reserves and Surplus as on 31-03-2010 stands at Rs.2,45,73,871/-. As against this, the amount of advance on which the disallowance of interest has been confirmed stands at Rs.7,65,000/-.

5. At this juncture, it is relevant to note that section 36(1)(iii) provides for deduction of interest of the amount of interest paid in

respect of capital borrowed for the purpose of business or profession. The essence of this provision is that the interest should be allowed so long as the capital borrowed, on which such interest is paid, is used for the purpose of business or profession. If, however, an assessee is having its own interest free surplus funds and such funds are utilised as interest free advances even for a non-business purpose, there cannot be any disallowance of interest paid on interest bearing loans. The Hon'ble Supreme Court in *CIT(LTU) VS. Reliance Industries Ltd. (2019) 410 ITR 466 (SC)* has recently held that if there be interest free funds available to the assessee sufficient to meet its investment and at the same time loan has been raised, it can be presumed that the investments were from interest free funds. Eventually it was held that no disallowance of interest is called for in such circumstances. The Hon'ble Bombay High Court in *CIT vs. Reliance Utilities and Power Ltd. (2009) 313 ITR 340 (Bom)*, has held that where an assessee possessed sufficient interest free funds of its own which were generated in the course of relevant financial year, apart from substantial shareholders' funds, presumption stands established that the investments in sister concerns were made by the assessee out of interest free funds and,

therefore, no part of interest on borrowings can be disallowed on the basis that the investments were made out of interest bearing funds. In that case, the AO recorded a finding that a sum of Rs.213 crore was invested by the assessee out of its own funds and Rs.1.74 crore out of borrowed funds. Accordingly, disallowance of interest was made to the tune of Rs.2.40 crore. The assessee argued that no part of interest bearing funds had gone into investment in those two companies in respect of which the AO made disallowance of interest. It was also argued that income from operations of the company was Rs.418.04 crore and the assessee had also raised capital of Rs.7.90 crore, apart from receiving interest free deposit of Rs.10.03 crore. The assessee submitted before the first appellate authority that the balance-sheet of the assessee adequately depicted that there were enough interest free funds at its disposal for making investment. The Id. CIT(A) got convinced with the assessee's submissions and deleted the addition. Before the Tribunal, it was contended on behalf of the Revenue that the shareholders' funds were utilized for the purchase of its assets and hence the assessee was left with no reserve or own funds for making investment in the sister concern. Thus, it was argued that the borrowed funds had

been utilized for the purpose of making investment in the sister concern and the disallowance of interest was rightly called for. The Tribunal, on appreciation of facts, recorded a finding that the assessee had sufficient funds of its own for making investment without using the interest bearing funds. Accordingly, the order of CIT(A) was upheld. When the matter came up before the Hon'ble High Court, it was contended by the Department that the shareholders' funds stood utilized in the purchase of fixed assets and hence could not be construed as available for investment in sister concern. Repelling this contention, the Hon'ble High Court observed that : "In our opinion, the very basis on which the Revenue had sought to contend or argue their case that the shareholders' fund to the tune of over Rs.172 crore was utilized for the purpose of fixed assets in terms of the balance-sheet as on March 31, 1999, is fallacious." In upholding the order of the Tribunal, the Hon'ble High Court held that: "If there be interest free funds available to an assessee sufficient to meet its investment and at the same time the assessee had raised a loan, it can be presumed that the investments were from the interest free funds available". Thereafter, the judgment of the Hon'ble Supreme Court in the case

of *East India Pharmaceutical Works Ltd. Vs. CIT (1997) 224 ITR 627 (SC)* and also the judgment of the Hon'ble Calcutta High Court in *Woolcombers of India Ltd. Vs. CIT (1981) 134 ITR 219 (Cal)* were considered. It was finally concluded that: "The principle, therefore, would be that if there are funds available both interest free and overdraft and/or loans taken, then a presumption would arise that the investments would be out of interest free funds generated or available with the company, if the interest free funds were sufficient to meet the investment". Consequently the interest was held to be deductible in full. From the above judgment, it is manifest if an assessee has interest free funds as well as interest bearing funds at its disposal, then the presumption would be that investments were made from interest free funds at its disposal. Similar view has been taken by the Hon'ble Delhi High Court in *CIT vs. Tin Box Company (2003) 260 ITR 637 (Del)*, holding that when the capital and interest free unsecured loan with the assessee far exceeded the interest free loan advanced to the sister concern, disallowance of part of interest out of total interest paid by the assessee to the bank was not justified. As the shareholders' fund in the instant case is far in excess of the amount of advance, I am

satisfied that the disallowance made by the AO has been wrongly sustained in the first appeal to this extent. I, therefore, order to delete the same.

6. Ground No.2 is against the confirmation of addition of Rs.3,35,159/- towards expenses incurred through credit card.

7. The facts apropos this ground are that the AO observed from the audit report that a sum of Rs.6,70,318/- was incurred through credit card. The assessee was called upon to explain the nature of expenses incurred through such credit card. The assessee produced ledger extract and credit card bills, monthly statements from which it was shown that the expenses related to hotel, purchase of cloth, travelling, petrol etc. Treating such expenses as personal in nature, the AO made disallowance of Rs.6,70,318/-. The Id. CIT(A) restricted the addition to 50%.

8. I have heard both the sides and gone through the relevant material on record. I find that the assessee in the instant appeal is a private limited company. There is no dearth of judicial precedents holding that there cannot be any disallowance of expenses in the hands of company on account of personal use even by its directors.

The Hon'ble Gujarat High Court in *Sayaji Iron and Engineering Company vs. CIT (2002) 253 ITR 749 (Guj)* has held that there cannot be any disallowance of personal expenses for cars on account of personal use by the director. It has been further held that no disallowance can be made even by treating such expenditure as not having been incurred for the business purpose. Similar view has been taken by the Delhi Bench of the Tribunal in several cases including *Dy. CIT vs. Haryana Oxygen Ltd. (2001) 76 ITD 32 (Del)*. Thus it is evident that there can be no disallowance on account of personal use by the director-employees of the assessee. Such an amount can be treated as a perquisite in the hands of the employees. In view of the above decisions, I hold that the Id. CIT(A) was not justified in sustaining the disallowance at 50%. The addition is deleted.

9. Ground No.3 is against the confirmation of addition of Rs.46,458/- on account of personal expenses incurred by a director for foreign tour.

10. Mr. Nitish Shastri, director of the assessee company made two foreign tours to Kuala Lumpur (Malaysia) on which expenditure of Rs.92,917/- was incurred. Considering the personal element, the

AO disallowed 50% of the expenditure at Rs.46,458/-, which disallowance came to be countenanced in the first appeal.

11. Having heard both the sides and gone through the relevant material on record, I find that page 84 of the paper book is a letter from Larsen and Toubro addressed to Mr. Nitish Shastri requesting him to visit the Switchgears plant in Malaysia. It is pursuant to this letter that Mr. Nitish Shastri visited Malaysia. As such, the business purpose is established and there is no reason to make any disallowance on this score. I, therefore, order to delete the addition.

12. Ground No.4 is against the confirmation of addition of Rs.2,50,000/- u/s.68 of the Income-tax Act, 1961 (hereinafter also called 'the Act').

13. The assessee had shown to have received total loans of Rs.4.00 lakh, viz., Mr. Krupali Shastri – Rs.1,50,000/-; Noor Steel – Rs.1,50,000/- and Mr. Sonar Subhas (its employee) - Rs.1,00,000/. The assessee was required to prove the genuineness of the cash shown to have been received from these three persons. The assessee could not convince the AO in so far as the loans from Mr. Krupali Shastri and Mr. Sonar Subhas are concerned. He, therefore,

made an addition of Rs.2,50,000/-. The Id. CIT(A) confirmed the addition in respect of loan allegedly shown to have been received from Mr. Krupali Shastri. For the loan shown to have been received from Mr. Sonar Subhas, the Id. CIT(A) directed the AO to verify whether he was an employee of the company and proof of salary, advance etc. given to him.

14. I have heard both the sides and gone through the relevant material on record. In so far as the loan from Mr. Krupali Shastri is concerned, the assessee could not file any evidence to substantiate the genuineness of transaction except confirmation despite specific requisition of the AO. Neither any return of income, balance sheet, wealth tax return of Mr. Krupali Shastri was filed nor any other evidence to show the genuineness of the transaction. Similar position prevails up to the Tribunal level as well. As such, I am satisfied that the addition of Rs.1,50,000/- has been rightly confirmed.

15. As regards the remaining amount of loan of Rs.1.00 lakh from Mr. Sonar Subhas, it is seen that the assessee claimed to have received this amount from his employee. It was submitted that an

advance of Rs.2-2.5 lakh was given to him, out of which Rs.1.00 was received in cash. No evidence in respect of giving of the loan to the employee in the past has been tendered before the Tribunal. The Id. AR could not show even the existence of the loan in the assessee's balance sheet. Thus it is held that the assessee has failed to prove the genuineness of the transaction. It is seen that the Id. CIT(A) has restored the matter to the file of the AO, for which he has no power. In the absence of the Revenue having filed any appeal against the impugned order, I cannot put the assessee to a more disadvantageous position than in which it was before the filing of the appeal before the tribunal. In the given circumstances, I approve the action of the Id. CIT(A) in restoring the matter to the AO without granting any further relief to the assessee. This ground is not allowed.

16. The last ground is against the confirmation of addition of Rs.1.00 lakh made on *ad hoc* basis out of certain expenses.

17. Facts relating to this ground are that the assessee claimed Repair and maintenance expenses of Rs.10,81,158/-; Freight outwards of Rs.12,22,512/-; and Tea & Refreshment of Rs.10,49,491/-. The AO, on perusal of details, observed that all the

expenses were not fully supported by bills and vouchers and delivery challans or other supporting evidence. He, therefore, made an *ad hoc* 5% disallowance at Rs.1,67,658/-. The ld. CIT(A) reduced this addition to Rs.1.00 lakh, against which the assessee has come up in appeal before the Tribunal.

18. After considering the rival submissions and perusing the relevant material on record, it is observed that the AO has made the addition on ad hoc basis, without pointing out specifically as to which particular expenses were not properly vouched. In such circumstances, there can be no partial sustenance of addition on *ad hoc* basis. I, therefore order to delete the remaining addition of Rs.1.00 lakh also. This ground is allowed.

19. In the result, the appeal is partly allowed.

Order pronounced in the Open Court on 17th May, 2019.

Sd/-
(R.S.SYAL)

उपाध्यक्ष/ VICE PRESIDENT

पुणे Pune; दिनांक Dated : 17th May, 2019

सतीश

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) /
The CIT (Appeals)-1, Nashik
4. The Pr. CIT-1, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "SMC" / DR 'SMC',
ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT Pune

		Date	
1.	Draft dictated on	16-05-2019	Sr.PS
2.	Draft placed before author	16-05-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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