

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.473/Del/2017

निर्धारणवर्ष/Assessment Year: 2013-14

Lauls Limited Malhotra Khandelwal & Co., 42, Neelam Flyover, 1st Floor, Faridabad.	बनाम Vs.	DCIT Circle 1, Faridabad.
PAN No. AAACL3118P		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

आ.अ.सं./I.T.A Nos.3284 & 5485/Del/2018

निर्धारणवर्ष/Assessment Years: 2014-15 & 2015-16

Lauls Limited Malhotra Khandelwal & Co., 41-46, Hardware Chowk, Near Govt. Press, Faridabad, Haryana.	बनाम Vs.	DCIT Circle 1, Faridabad.
PAN No. AAACL3118P		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Sh. P.C. Parwal, CA
राजस्वकीओरसे /Revenue by	Ms. Garima Sharma, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	07.06.2022
उद्घोषणाकीतारीख/Pronouncement on	28.06.2022

आदेश /ORDER

PER C.N. PRASAD, J.M.

These three appeals are filed by the assessee against different orders of Ld. Commissioner of Income Tax (Appeals), Faridabad for the assessment years 2013-14, 2014-15 and 2015-16.

2. First we take up the appeal of the assessee for the AY 2013-14.

ITA No. 473/Del/2017 (AY 2013-14):

The assessee has raised the following effective grounds for AY 2013-14:

1. *“The Ld. CIT(A) has erred on facts and in law in confirming the disallowance of depreciation of Rs.7,05,000/- on the crane purchased by the assessee by holding that purchase of crane is not genuine.*
2. *The Ld.CIT(A) has erred on facts and in law in confirming the disallowance of employees contribution to PF of Rs.1,20,067/- by invoking provisions of Section 2(24)(x) r.w.s. 36(1)(va).”*

2.1 Ground no. 1 of grounds of appeal relates to disallowance of depreciation on crane purchased by the assessee which was disallowed by the Assessing Officer holding that purchase of crane is not genuine.

3. The Ld. Counsel for the assessee submits that the AO disallowed depreciation on crane purchased by the assessee during the AY 2013-14 holding that purchase of crane is not genuine. The Ld. Counsel submits that depreciation on crane was also disallowed by the AO for the assessment years 2014-15 and 2015-16. The Ld. Counsel for the assessee submits that assessment for the AY 2017-18 was selected for compulsory scrutiny on the basis of the disallowance of depreciation on crane made in the AY 2013-14 and sustained by the Ld. CIT(A). The Ld. Counsel referring to page 19 of the Paper Book submits that the order sheet noting clearly shows that assessment for AY 2017-18 was selected for compulsory scrutiny to disallow depreciation on crane as was done for the assessment years

2013-14 to 2015-16. The Ld. Counsel for the assessee submits that in the course of assessment proceedings for the AY 2017-18 it was submitted before Assessing Officer that the assessee could not furnish confirmation from supplier of the crane as the assessee bought this crane through broker and the missionary imported not directly connected with the supplier of the missionary and the payment has been made on the advice of broker through RTGS and, therefore, the assessee could not get the confirmation directly from the supplier. The Ld. Counsel submits that it was requested before the Assessing Officer to physically verify the existence of the crane in the factory premises which is working since AY 2013-14. The Ld. Counsel submits that in fact the AO deputed Inspector to verify the existence of the crane and the Inspector on field enquiry submitted a report that crane is in existence at the premises of the assessee and used for the operations of the company. The Ld. Counsel submits that based on the report of the Inspector the AO allowed depreciation on the crane and no addition/disallowance made towards depreciation while completing the assessment for AY 2017-18 on 04.12.2019 u/s 143(3) of the Act. The Ld. Counsel submits that assessment order passed u/s 143(3) for the AY 2017-18 is placed at page nos. 31 & 32 of the Paper Book. Therefore, the Ld. Counsel for the assessee submits that since the crane is in existence and used in business operations of the assessee. There is no justification in disallowing depreciation simply because the assessee could not furnish the

confirmation letter from the supplier. Therefore, he pleads that the disallowance made towards depreciation on crane for the assessment years 2013-14, 2014-15 and 2015-16 be deleted.

4. The Ld. DR strongly supported the orders of the authorities below.

5. Heard rival submissions, perused the orders of the authorities below. On perusal of the assessment order, we noticed that the Assessing Officer disallowed depreciation on crane observing that assessee could not justify the purchase of crane and no material evidence in this regard was furnished. It is observed by the AO that neither any installation proof nor any agreement of guarantee/warrantee of such costly crane was furnished. Therefore, in the absence of any material evidence the AO disbelieved purchase of crane and denied claim for depreciation of Rs.7,05,000/-. However, it is observed from the order sheet noting for the AY 2017-18 which is placed at page 19 of the Paper Book that the AO on due field verification allowed depreciation on crane and the observations are as under: -

“Notings/Remarks: Office Note: - The case was selected for compulsory scrutiny on the basis of addition made in the AY 2013-14 and sustained by the CIT(A) on the issue of disallowance of depreciation on crane purchased for want of confirmation from the supplier of machinery. During the course of assessment proceedings the assessee submitted that depreciation on the crane cannot be denied just because the confirmation could not be done at the time of original assessment for the AY 2013-14. The assessee further submitted that the company bought this crane through broker which is second hand imported machinery and it is not directly

connected with the supplier of the machinery and as the payment has been made on the advice of broker at Bombay through RTGS therefore the confirmation is not in its hand. The assessee also requested to get it physically verified that crane is in existence in the factory premises and working for TATA Steel Ltd. as the assessee company is the handling agent of TATA Steel. In view of the request of the assessee the Inspector of this office was deputed to make field enquiry and submit report on the issue. The Inspector vide this report dated 28.11.2019 submitted that crane bearing no. NL-02-K-6510, Model No. 650, Serial No. 47022, Chasis - 9809, CARR No. 853900, Upper AY 853800 exists at the premises of the assessee company and used for the operations of the company. The report of the Inspector along with the pictures of crane taken at the site of Assessee Company is placed on record. The assessment in this case has been completed keeping in view the report of the Inspector and the reply of the assessee company.”

6. As could be seen from the above, the AO deputed Inspector to verify as to whether the crane is in existence as contended by the assessee that the crane is used in the business operations of the assessee and works in factory and the Assessing Officer based on inspectors report found that the crane is in existence and working for Companies operations allowed depreciation on crane while completing the assessment for the AY 2017-18. Since the assessee proved that the crane is in existence and used for its business operations which fact was also accepted by the AO that the said crane is used for business operations of the assessee the AO should not have disallowed depreciation for the assessment years 2013-14, 2014-15 & 2015-16 for want of confirmation from the supplier and other documents especially when the crane was purchased through broker and there is no dispute on payment of purchase

consideration by the assessee. Thus, the disallowance of depreciation on crane made by AO is deleted. Ground no. 1 is allowed.

7. Coming to ground no. 2 relating to disallowance of employees contribution of Rs.1,20,067/- to Provident Fund, the Ld. Counsel submits that the assessee remitted the employees contribution to PF with delay of one day as after the due date as specified in the Provident Fund Act i.e. the due date for remittance under the said Act was 20.08.2012 and whereas the assessee has remitted the said contribution on 21.08.2012. The Ld. Counsel submits that as the assessee remitted the Provident Fund Contribution before due date for filing return of income there is no justification in disallowing the said contribution. Reliance was placed on the decision of Delhi Bench SMC in the case of Chaturamal Garg Vs. ACIT ITA No. 850/Del/2021 dated 29.10.2021.

7.1 On hearing both the parties and perusing the orders of the authorities below, we observe that the assessee deposited Employees Contribution to Provident Fund before due date for filing return of income. We find that the Hon'ble Delhi High Court in the case of CIT Vs. AIMIL Limited (321 ITR 508) has held that no disallowance of PF/ESI contribution is called for when the amounts are deposited before filing the return of income. Thus, respectfully following the said decision, we delete the disallowance made towards employees contribution of Rs.1,20,067/- towards Provident Fund.

8. ITA No. 3284/Del/2018 (AY 2014-15)

Coming to AY 2014-15 the assessee has raised the following effective grounds:

1. *“The Ld. CIT(A) has erred on facts and in law in confirming the disallowance of depreciation of Rs.11,98,500/- on the crane purchased by the assessee in AY 2013-14 on the ground that in that year it is held that purchase of crane is not genuine.*
2. *The Ld. CIT(A) has erred on facts and in law in confirming the disallowance of depreciation of Rs.5,25,000/- on the trucks purchased on 31.03.2014 by holding that the same were not put to use or even not fit to be used on 31.03.2014.*
3. *The Ld. CIT(A) has erred on facts and in law in confirming the disallowance of Rs.5,26,198/- out of the interest payment by holding that advance given to M/s Kamal Steel Fabricators and Agarwal Enterprises is not for commercial expediency and also without considering the interest free funds available with the assessee for giving such advance.”*

9. Ground no. 1 of grounds of appeal relates to disallowance of depreciation on crane. We have already decided this issue in favour of the assessee deleting the disallowance of depreciation on crane for the AY 2013-14 and for the reasons given therein, we hold that the decision taken in the appeal for the AY 2013-14 applies *mutatis mutandis* for the appeal for AY 2014-15. Accordingly, we direct the AO to delete the disallowance made towards depreciation on crane for the assessment year 2014-15.

10. Ground no. 2 relates to disallowance of depreciation on trucks purchased on 31.03.2014 by the assessee on the ground that the trucks were not put to use. The Ld. Counsel for the assessee submits that assessee purchased trucks on 31.03.2014 and claimed depreciation as the asset was ready to put to use. The AO denied depreciation on the ground that trucks are not complete and they cannot be put to use.

11. On hearing both the sides and perusing the orders of the authorities below, we find that the assessee purchased two trucks on 31.03.2014. The invoices revealed that the assessee purchased these two trucks from Magma Enterprises and what was sold by Magma Enterprises was only chasis of trucks and not completed trucks with body. In other words, the assessee purchased only chasis without body. Unless the trucks are complete with body it cannot be said that the trucks are ready to put to use. Therefore, we hold that the assessee is not entitled for depreciation on trucks and the lower authorities have rightly denied the claim for depreciation on these trucks.

12. The Ld. Counsel further submits that in case depreciation is not allowed on trucks for the AY 2013-14 the AO be directed to consider for allowing depreciation on entire cost of trucks i.e. chasis as well as body in AY 2014-15, as the AO computed the depreciation for AY 2014-15 on WDV as reduced by the claim for depreciation by the assessee in AY 2013-14.

13. Considering the submissions of the assessee, we direct the AO to consider the entire cost of trucks including body for the purpose of allowing depreciation in the AY 2014-15 and not on the reduced WDV as furnished by the assessee after assessee claiming the depreciation in the AY 2013-14.

14. The next ground relates to disallowance of Rs.5,26,198/- out of interest payment on the ground that advance given to Kamal Steel Fabricators and Aggarwal Enterprises is not for commercial expediency. The Ld. Counsel for the assessee referring to pages 43 & 44 of the Paper Book submits that assessee has advanced 2.45 crores to its sister concern and it is a running account between assessee and its sister concern. The Ld. Counsel submits that sister concern makes purchases from the assessee and also sales to the assessee and, therefore, there is commercial expediency in advancing monies to sister concern. The Ld. Counsel submits that as a matter of fact at the end of the year assessee took more money than it advanced to its sister concern.

15. The Ld. Counsel further submits that the assessee advanced Rs.4 crores to Aggarwal Enterprises in the month of March, 2014 and the said advance was re-paid by Aggarwal Enterprises on 25.04.2014 and the advance was given only for a month.

16. The Ld. Counsel further submits that these advances are given from out of reserve and surplus and not out of borrowed funds and,

therefore, no notional interest can be disallowed. The Ld. Counsel further referring to page 48 of the Paper Book submits that borrowed funds are utilized for acquiring fixed assets and the value of fixed assets as on 31.03.2014 have gone up to 52.16 crores as against 24.61 crores as on 31.03.2013. The Ld. Counsel submits that the assessee has sufficient interest free funds by way of share capital and reserve and surplus of Rs.17.19 crores to provide such interest free advances. Ld. Counsel submits that the borrowed funds taken from banks and financial institutions have been used for the purpose for which it has been borrowed and there is no nexus that borrowed funds have been used for giving advance. Further when assessee is having both interest bearing funds and interest free funds, then it has to be presumed that advances/loans were given out of interest free funds. For this purpose reliance was placed on the following cases: -

1. *CIT vs. Reliance Industries Ltd. (2019) 175 DTR 1 (SC);*
2. *CIT vs. Ram Kishan Verma (2016) 132 DTR 107 (Raj.) (HC);*
3. *CIT vs. Vijay Solvex Ltd. (2015) 113 DTR 382 (Raj.) (HC).*

17. The ld. DR submits that the assessee could not prove any commercial expediency in advancing the monies to sister concern and also Aggarwal Enterprises. She strongly supported the orders of the authorities below.

18. Heard rival submissions, perused the orders of the authorities below. In so far as the commercial expediency is concerned the assessee except

stating that it has transactions with sister concern and made purchases and sales and is maintaining current account the assessee could not substantiate the commercial expediency by providing the necessary details as to how there is commercial expediency in advancing the monies. The assessee could not explain for what purpose the funds were advanced to its sister concern and similarly for what purpose the funds were taken from its sister concern. Simply because the assessee is maintaining current account with its sister concern it does not lead to any commercial expediency. However, we find force in the submissions of the assessee that when the assessee is having interest free funds and they are sufficient to meet its investments/advances it can be presumed that funds were given to subsidiaries/sister concerns are out of interest free funds and no notional interest can be disallowed. On perusal of the balance sheet of the assessee, we find that the assessee has share capital, reserve and surplus to the extent of 17.19 crores and the outstanding balance as on 31.03.2014 in the case of Kamal Steel Fabricators stood at 2,45,36,627/- and in the case of Aggarwal Enterprises at Rs.3,93,40,000/-. Therefore, since the share capital and reserves and surplus are much more than the advances given by the assessee to Kamal Steel Fabricator and Aggarwal Enterprises there is a presumption that the advances were given out of share capital, reserve and surplus. Thus, the ratio of the decisions relied on supports the assessee's contention. Thus, respectfully following the said decisions the disallowance made by the AO towards interest is deleted.

19. ITA No. 5485/Del/2018 (AY 2015-16)

The only issue in this appeal relates to disallowance of depreciation on crane. We have decided this issue in favour of the assessee deleting the disallowance of depreciation on crane for the AY 2013-14 for the reasons given therein, we hold that the decision taken for the appeal for AY 2013-14 applies *mutatis mutandis* for the appeal for AY 2015-16. Accordingly, we direct the AO to delete the disallowance made towards depreciation on crane for the AY 2015-16.

20. In the result, the appeals for the assessment years 2013-14 & 2015-16 are allowed and the appeal for the AY 2014-15 is partly allowed.

Order pronounced in the open court on 28/06/2022

Sd/-
(G.S. PANNU)
PRESIDENT

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 28.06.2022

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi

Date of dictation	10.06.2022/15.06.2022
Date on which the typed draft is placed before the dictating Member	14.06.2022/15.06.2022
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	