आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'A'

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आयकर अपील सं./ **ITA No.1717 and 1971/Ahd/2015**
With
CO No.124 and 148/Ahd/2015
*निर्धारण वर्ष/***Asstt. Years: 2010-11 and 2011-12**

DCIT, Cir.1(1)(1) Ahmedabad.	Vs.	M/s.Ahmedabad Strips P.Ltd. 604, Sarap Complex, 6th Floor Navjivan Press Road Bh. Gujarat Vidhyapeeth Ashram Road Ahmedabad 380 014. PAN : AABCA 8222 A
अपीलार्थी/ (Appellant)		*प्रत्यर्थी/* (Respondent)

Revenue by	:	Shri Alhinus Tirkey, Sr.DR
Assessee by	:	Shri Bhavesh Shah, AR

*सुनवाई की तारीख/*Date of Hearing : 04/01/2018
*घोषणा की तारीख /*Date of Pronouncement: 01/02/2018

*आदेश/***O R D E R**

PER RAJPAL YADAV, JUDICIAL MEMBER:

Revenue is in appeal before the Tribunal against orders of ld.CIT(A)-1, Ahmedabad dated 19.2.2015 and 24.4.2015 passed for the Assessment Year 2010-11 and 2011-12 respectively. On receipt of notice in the Revenue's appeal, the assessee has filed Cross Objection bearing CO No.124/Ahd/2015 and 148/Ahd/2015 for the Assessment years 2010-11 and 2011-12 respectively.

2. First we take appeals of the Revenue.

3. Ground no.1 in both years is common. Grievance of the Revenue is that the ld.CIT(A) has erred in deleting addition of Rs.35,95,578/- and Rs.67,30,923/- in the Asstt.Year 2010-11 and 2011-12 respectively. These additions were made by the AO with the aid of section 40A(2)(b) of the Income Tax Act, 1961.

4. Facts on all vital points are common in both the years. Therefore, for facility of reference we take up facts from the Asstt.Year 2010-11.

5. It emerges out from the record that in the Asstt.Year 2010-11 the assessee has availed loan from 41 persons whereas in the Asstt.Year 2011-12 it took loans from 47 persons/entities. The assessee has paid interest at the rate of 15% to 18% to its unsecured creditors. The ld.AO was of the opinion that interest paid by the assessee over and above 12% is excessive. He further observed that sub-section (a) and (b) of section 40(A) contemplates that if any assessee availed services or makes purchases from parties, who are specified persons (related parties as defined in section 40A(2)(b) of the Act) is excessive, having regard to fair market value of the services provided, then the expenditure found recorded to be excessive shall not be allowed as deduction. There is no dispute with regard to the fact that creditor to whom interest was paid falls within the ambit of specified persons. The AO has considered fair market value of the interest required to be paid at 12%, which is commensurate with the bank rates. Accordingly, he disallowed interest paid over and above 12% per annum, and accordingly made an addition of Rs.35,95,578/- in Asstt.Year 2010-11 and Rs.67,30,923/- in the Asstt.Year 2011-12. On appeal, the ld.CIT(A) deleted both the disallowance. The ld.CIT(A) has recorded a finding that interest payment on unsecured loans in between 15% to 18% is not excessive. It is commensurate with the fair market value of availing loans at this rate.

6. Before us the ld.counsel for the assessee contended that in the Asstt.Year 2008-09 and 2009-10 similar disallowance was made. Dispute travelled up to the Tribunal, and the Tribunal has deleted the disallowance. He placed on record copy of the Tribunal's order in ITA No.239 and 1836/Ahd/2012. On the other hand, the ld.DR relied upon the orders of the AO.

7. We have duly considered rival contentions and gone through the record. There is no dispute with regard to the fact that creditors do fall within the category of specified persons contemplated in section 40A(2)(b) of the Act. Short question before us is, whether payment of interest at the rate of 18% to such persons on the loans availed from them is excessive or not, having regard to the fair market value of such loans. No doubt, the ld.AO took into consideration interest rate at 12%. This is the rate on which banks used to grant small time loans. This rate was also keeps on fluctuating from 12% to 14%, but it is to be kept in mind that loans availed by the assessee were unsecured loans. It has avoided a large number of formalities, such as, giving securities, pledging something etc. In such situation a little payment of higher rate of interest could not be termed as excessive. Therefore, we are of the view that the ld.CIT(A)has rightly deleted the disallowance. Ground no.1 in both the years is rejected.

8. Ground No.3 in the Asstt.Year 2010-11 is inter-connected with Ground no.2 in the Asstt.Year 2011-12. Grievance of the Revenue in this regard is that the ld.CIT(A) has erred in deleting the addition of Rs.63,486/- and Rs.1,14,124/-.

9. Brief facts of the case are that the assessee has purchased a motor car in the name of Manager. It has incurred expenditure on interest which was paid on the loan used for purchasing the car. The assessee has also claimed depreciation. The ld.AO was of the view that since car was purchased in the name of Manager, it was not owned by the assessee,

therefore, expenditure incurred for acquiring car as well as depreciation is not admissible to the assessee. On the appeal, the ld.CIT(A) has observed that car was used practically for the business purpose of the assessee. It has provided finance for purchasing the car. The only name of the Manager is being reflected in the registration certificate. Otherwise, for all other practical purposes car was used by the assessee. The ld.CIT(A) has looked into supporting evidence, and thereafter allowed incidental expenses as well as depreciation. After going through order of the ld.CIT(A), we do not find any reasons to interfere in it. Car was practically owned and possessed by the assessee. It was used for the purpose of assessee's business. Therefore, this ground of appeal is rejected in both the years.

10. Ground no.2 in the Asstt.Year 2010-11. In this ground, Revenue's grievance is that the ld.CIT(A) has erred in deleting addition of Rs.1,77,730/-.

11. With the assistance of the ld.representatives, we have gone through the record carefully. It emerges out from the record that the assessee has paid a sum of Rs.1,77,730/- to M/s.Narmada Chem. It failed to deduct TDS on this amount. The ld.AO has disallowed deduction of this expenditure with the help of section 40(a)(ia) of the Act. On appeal, the ld.CIT(A) has deleted this addition on the ground that M/s.Narmada Chem has filed its return and included receipts from the assessee in its taxable income. We find that the issue in dispute is covered in favour of the assessee by the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Ansal Landmark Township P.Ltd., 377 ITR 635 (Del). Hon'ble Court has held that second *proviso* to section 40(a) of the Act is to be read as applicable with retrospective effect. According to this proviso, if a payee has filed its return disclosing payment received, then the assessee would not be considered in default. The order of the ld.CIT(A) is in line with Hon'ble Delhi Court's decision, therefore, no interfere is called. This ground of appeal of the Revenue is rejected.

12. Ground No.3 in the Asstt.Year 2011-12.

13. Brief facts of the case are that the assessee has installed lab equipments and certain electrical items. It claimed additional depreciation at the rate of 20% on these items, which were disallowed by the AO. The AO was of the opinion that lab equipments and electrical installation would not qualify for plant & machinery for the purpose of manufacture. In other words, according to the AO, these items would not be considered as part of plant & machinery used for manufacturing purpose. She disallowed additional depreciation and made addition of Rs.1,10,025/-. On appeal, the ld.CIT(A) deleted disallowance.

14. With the assistance of the ld.representatives, we have gone through the record carefully. With regard to the fact that the assessee is engaged in manufacturing activities, the AO has also not disputed. It is also not disputed that the assessee has installed certain electrical items and lab equipments, which according to the assessee eligible for grant of additional deprecation. The AO disallowed the claim only on the ground that these items were not used for manufacturing process. A perusal of the assessee's submission before the ld.AO would indicate that the assessee has purchased electrical items, such as, electrical cables, capacitors and UGVCL (Power supply company) line charges for increase in power load. Expenditure was incurred mainly for additional power connection charges. According to the assessee, it is part of plant & machinery and additional depreciation is eligible as per proviso of section 32(1)(a) of the Act. Since this electrical machine required additional power and it is inter-connected with its manufacturing activity, it cannot be said that these cables etc. would not be part of manufacturing process. Similarly, lab equipments are linked to manufacturing process, and depreciation would be applicable. The ld.CIT(A) has rightly held that the assessee is entitled for additional

depreciation on these items. We do not find any merit in the ground of appeal. It is rejected.

15. In the result, both appeals of the Revenue are dismissed.

16. So far as both Cross Objections filed by the assessee are concerned, the ld.counsel for the assessee submitted that tphe same are in support of ld.CIT(A)'s order, and may be disposed of accordingly. In view of this submission of the ld.counsel for the assessee, since we have dismissed the appeals of the Revenue and upheld the orders of the ld.CIT(A), the CO filed by the assessee are merely academic in nature, the same are dismissed accordingly.

17. In the result, both appeals of the Revenue and COs. of the assessee are dismissed.

Order pronounced in the Court on 1st February, 2018.

Sd/-	Sd/-
(PRADIP KUMAR KEDIA)	(RAJPAL YADAV)
ACCOUNTANT MEMBER	JUDICIAL MEMBER