

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI N. K. SAINI, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 57/Del/2012 (A.Y 2008-09)

K. T. M. India C/o. M/s. RRA Tax India, D-28, South Extension, Part-1 New Delhi AAEFK6502B (APPELLANT)	Vs	DCIT Panipat Circle, Panipat (RESPONDENT)
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Appellant by	Sh. Rakesh Gupta, Sh. Somil Agarwal, Advs.
Respondent by	Sh. Naina Soin Kapil, Sr. DR

Date of Hearing	26.09.2018
Date of Pronouncement	15.10.2018

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 31/10/2011 passed by CIT (A)-Karnal, for Assessment Year 2008-09.

2. The grounds of appeal are as under:-

“1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in disallowing the deduction of Rs.7,05,311/- u/s 80IB in respect of purported export incentives even though assessee was supporting manufacturer.

2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in passing the impugned order and

disallowing the claim u/s 801B in respect of purported export incentives is bad in law and against the facts and circumstances of the case.

3. That having regard to the facts and circumstances of the case. Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs.65,250/- on account of pro-rate interest on loan u/s 36(i)(iii) of the Income Tax Act., 1961.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.20,89,100/- on account of short term capital gain arising on sale of land.

5. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned assessment in violation of principles of natural justice and by recording incorrect facts and findings and without providing adequate opportunity of hearing.”

3. The assessee is a partnership concern and derives income as a supporting manufacturer, from manufacturing and export of handloom products. The assessee firm received capital towards DEPB/Duty Draw Back amounting to Rs.60,47,967/- in respect of export realization. The assessee claimed deduction u/s 80IB for Rs.7,05,311/- at 25% on the profit of Rs. 28,21,245/-. The Assessing Officer held that DEPB/Duty Draw Back claims amounting to Rs. 7,05,311/- in respect of export realization were not profits derived from industrial undertaking and reduced the claim of deduction u/s 80IB from Rs. 7,05,311/- to Rs. NIL. The Assessing Officer further made addition of Rs. 65,250/- on account of pro rata interest on loan u/s 36(i) (iii) of the Act. The Assessing Officer also made addition amounting to Rs.20, 89,100/- on account of short term capital gain arises on sale of land.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT (A). The CIT (A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that as relates to Ground No. 1 & 2, the same is decided against the assessee in assessee's own case for Assessment Year 2007-08 being ITA Nos. 5619, 2529/Del/2011, ITA No. 1981/Del/2012, ITA No. 3165/Del/2011 vide order dated 14th September, 2018. As regards, Ground No. 3, the Ld. AR submitted that the assessee, during the assessment submitted the details regarding advances for furniture and fixture, advance petrified and loans and advances to sister concerns. Thus, the Ld. AR submitted that all these amounts were interest free advances and, therefore, the Assessing Officer was incorrect in making disallowance of Rs. 65,250/- on account of pro rata interest on loan u/s 36(i) (iii) of the Act. As regards Ground No. 4, the Ld. AR submitted that the assessee sold its business as slump sale to SPJ Textiles Pvt. Ltd on 2/7/2007 for the consideration of Rs. 3,89,84,198.86/-. The balance sheet of the assessee as on 2/7/2007 containing land measuring 2 acre, 2 karnal, 15 marlas as asset which was duly reflected in Schedule of fixed assets of the balance sheet. The Assessing Officer as well as the CIT (A) has not verified these details. Therefore, the Ld. AR requested that the issue may be restored back to the file of the Assessing Officer for verification and proper adjudication. The Ld. AR submitted that Ground No. 5 and 6 are general in nature, hence, not pressed.

6. The Ld. DR relied upon the Assessment Order and the order of the CIT (A).

7. We have heard both the parties and perused the material available on record. As regards, Ground No. 1 & 2, the Tribunal decided the issue against the assessee. The Tribunal for Assessment Year 2007-08 held as under:-

“4. After hearing both the parties, we find that it is not in dispute that the assessee has given interest free advance to its sister concern. The assessee's case has been that it has given the advance from the interest free funds available out of capital of the partners and the entire loan was used for the purpose of business. The AO following the judgment of Hon'ble P & H High Court in the case of CIT vs. Abhishek (supra) held that on such an interest free advance proportionate interest has to be disallowed. Now the said judgment of Hon'ble P & H High Court in CIT vs. Abhishek (supra) has been overruled by the Hon'ble Supreme Court in the case of CIT vs. Munjal Sales Corporation, wherein the Hon'ble Supreme Court held that if assessee has huge interest free funds including the profit earned by the assessee during the year which is sufficient to cover the advancement of loan, then no interest should be disallowed. The assessee has demonstrated that the huge amount of money was lying in the capital of the partners and the profit earned during the relevant assessment year itself was approximately Rs.1.19 crores. Therefore, such an availability of funds interest free is sufficient to cover up a small interest free loan of Rs. 16 lacs given to sister concern. Accordingly, the disallowance of Rs. 1,14,777/- is deleted. In the result appeal of the assessee is allowed.”

Since, the issue is identical in present assessment year as well, the same is covered in assessee's own case against the assessee. Therefore, Ground No. 1 & 2 are dismissed.

8. As regards Ground No.3, the Assessing Officer as well as the CIT(A) has not looked into the aspect of the additions for the business purpose relating to furniture and fixtures and commercial expediencies. The Assessing Officer also ignored the loans and advances given to the sister concern. Therefore, this needs to be verified and therefore, we remand back this issue to the file of the Assessing Officer to adjudicate upon it as per the evidence produced before the

Assessing Officer by the assessee. Needless to say, the assessee be given opportunity of hearing by following principals of natural justice. Hence, Ground No. 3 is partly allowed for statistical purpose.

9. As regards Ground No.4, both the Assessing Officer as well as the CIT(A) has not taken the cognizance of the evidence produced before the Assessing Officer more particularly that of balance sheet and its profit. Therefore, this issue also needs to be remanded back to the file of the Assessing Officer. Needless to say, the assessee be given opportunity of hearing by following principals of natural justice. Ground No. 4 is partly allowed for statistical purpose.

10. As regards Ground No. 5 & 6, the same are general in nature and not pressed by the Ld. AR, hence dismissed.

11. In result, the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the Open Court on 15th October, 2018.

Sd/-

**(N. K. SAINI)
ACCOUNTANT MEMBER**

Dated: /10/2018
R.N*

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	26.09.2018
Date on which the typed draft is placed before the dictating Member	26.09.2018
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	.10.2018
Date on which the final order is uploaded on the website of ITAT	.10.2018
Date on which the file goes to the Bench Clerk	.10.2018
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	