

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, CHANDIGARH**

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No. 655/CHD/2016
Assessment Year : 2010-11

Shri Charanjeet Singh Chadha,
317-A, VTC House,
Industrial Area-A,
Ludhiana.

Vs The JCIT,
Range - VI,
Mohali.

PAN: AALPC5807A

(Appellant)

(Respondent)

Appellant by : Shri S.K.Mukhi
Respondent by : Shri Sushil Kumar, CIT-DR

Date of Hearing : 09.11.2016
Date of Pronouncement : 11.11.2016

ORDER

PER BHAVNESH SAINI, JM

This appeal by assessee has been directed against the order of ld. CIT(Appeals)-3 Ludhiana dated 04.03.2016 for assessment year 2010-11.

2. We have heard ld. Representatives of both the parties and perused the material on record.

3. Ground Nos. 1 and 4 are general and need no adjudication.

4. On ground No.2, assessee challenged the disallowance of commission of Rs. 3,04,400/- paid to Shri Sarabjeet Singh. During the course of assessment proceedings, it is observed that the assessee had debited a sum of Rs. 21,79,784/- to the Profit & Loss Account under the head 'Commission'. The assessee was asked to furnish details of commission paid and nature of services rendered. The assessee submitted the details of commission paid and submitted that TDS has been deducted and paid to the government account. The assessee was asked to furnish details of parties for whom the commission agents have worked, alongwith details of sales made to them and the confirmation of the parties to whom commission is paid. The assessee could not submit evidence of services rendered or confirmation in respect of commission paid to one person namely Shri Sarabjit Singh to whom commission has been paid amounting to Rs. 3,04,400/-. Accordingly, the commission paid to the aforesaid person was disallowed and added to the income of the assessee.

5. The assessee submitted before Id. CIT(Appeals) that Assessing Officer has failed to consider the fact that copy of the Income Tax Return filed by Shri Sarabjit Singh and details of commission were filed at assessment stage. The Income Tax Return and

Computation Chart duly reflected that commission income has been duly included in the total income declared by Shri Sarabjit Singh and as such, the copy of Income Tax Return submitted suffice the requirement of credit worthiness of Shri Sarabjit Singh.

6. The ld. CIT(Appeals), however, noted that assessee did not submit any evidence of services rendered or confirmation in respect of Shri Sarabjit Singh to whom the above commission have been paid. During the appellate proceedings, assessee filed copy of the ITR and computation of income of Shri Sarabjit Singh regarding commission paid but no application have been filed for admission of additional evidence. This ground was, accordingly, dismissed.

7. After considering rival submissions, we are of the view no interference is called for in the matter. The ld. counsel for the assessee reiterated the submissions made before authorities below and submitted that copy of the ITR and computation of income of Shri Sarabjit Singh only were filed before ld. CIT(Appeals) at appellate stage which proves that Shri Sarabjit Singh rendered services for the assessee and commission have been paid genuinely to him. The contention of ld. counsel for the assessee has no merit because the assessee pleaded that commission was paid to Shri Sarabjit Singh for the services rendered for the business of the assessee.

However, assessee has not produced any evidence before the authorities below regarding as to what services have been rendered by Shri Sarabjit Singh for the business of the assessee. No confirmation from Shri Sarabjit Singh was filed before the authorities below. Only Income Tax Return and Computation of Income of Shri Sarabjit Singh was filed to show that he has declared the commission income in his return of income on which TDS has been deducted but this will not serve the purpose because firstly the assessee did not file any request for admission of additional evidence before Id. CIT(Appeals) and further, merely showing commission income by Shri Sarabjit Singh would not prove that he indeed rendered service for the assessee. In the absence of any cogent and relevant evidence on record, we do not find any justification to interfere with the orders of authorities below. There is no merit in ground No. 2 of appeal of the assessee. Same is, accordingly, dismissed.

8. On ground No. 3, assessee challenged the disallowance of Rs. 1,46,585/- on account of interest for diversion of funds for non business purposes. As per assessment order, it was revealed that assessee had given an advance of Rs. 9,21,542/- to M/s Charanjit Singh & Sons (HUF). The assessee was asked to explain the purpose of advance given to HUF and whether interest is charged. The assessee was asked to explain

why interest on such funds diverted for non business purposes should not be disallowed. It was submitted by the assessee that no interest has been charged because the funds have been given out of own capital. The assessee's arguments were not accepted because the assessee has borrowed funds on which it has been paid to the extent of Rs. 20,23,973/-. It was, therefore, clear that assessee has diverted its interest bearing funds for non business purposes. Thus, the part of the borrowed funds are being utilized for non business purpose, therefore, corresponding amount of interest being paid and claimed by assessee as expenses was disallowed. The Assessing Officer made the above addition.

9. The assessee submitted before Id. CIT(Appeals) that above addition is made for disallowance of interest without considering the facts of the case. The Assessing Officer has failed to consider that the assessee has unsecured loan of Rs. 27,92,213/- and capital of Rs. 1,12,16,727/- as on 31.03.2010 which are more than the amount advanced i.e. Rs. 9,21,542/-. The assessee has not paid any interest on unsecured loans and the capital of the assessee also represents non interest bearing funds. Therefore, addition is unjustified. The Id. CIT(Appeals), however, did not accept contention of the assessee and confirmed the addition.

10. After considering rival submissions, we are of the view addition is wholly unjustified. The ld. counsel for the assessee filed copy of the ledger account of Shri Charanjit Singh & Sons, HUF to show that on 01.04.2009, there was debit opening balance of Rs. 15,21,542/- and during the year under consideration, assessee has received Rs. 9 lacs. In between the year, assessee has also advanced a sum of Rs. 3 lacs to the aforesaid HUF. Therefore, the debit balance at the end of the year was Rs. 9,21,542/-. It is, therefore, clear that the substantial amount was debit balance on 1st day of the financial year i.e. on 01.04.2009 and loans have been advanced to the aforesaid HUF in the preceding assessment year. The assessee has received Rs. 9 lacs in the year under consideration out of the debit balance. There is only one advance of Rs. 3 lacs given to this HUF in the year under consideration. However, assessee has sufficient capital and unsecured loans on which no interest have been paid. Therefore, these amounts are sufficient to cover non-business advance given to the aforesaid HUF.

10(i) Hon'ble Punjab & Haryana High Court in the case of Kapson Associates 381 ITR 204 held that, "*When assessee having sufficient interest free advances to cover interest free advances, no disallowance out of interest under section 36(1)(iii) be made*".

11. Considering totality of the facts and circumstances and the above discussion, we do not find any justification to sustain the addition. We, accordingly, set aside the orders of authorities below and delete the addition of Rs. 1,46,585/-. This ground of appeal of the assessee is allowed.

12. In the result, appeal of the assessee is partly allowed.

Order pronounced in the Open Court.

Sd/-

Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated: 11th November, 2016.

'Poonam'

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A)
4. The CIT,DR

Assistant Registrar,
ITAT/CHD