

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'H' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.4628/Del./2019
(ASSESSMENT YEAR : 2015-16)**

Guardian Nutrition & Health Supplements vs. ACIT, Circle 10 (2),
Pvt. Limited, New Delhi.
LP-8C, 1st Floor, Pitampura, West Delhi,
New Delhi – 110 088.

(PAN : AACCG2848K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Ms. Anupama Singla, Senior DR

Date of Hearing : 07.06.2022

Date of Order : 23.06.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal filed by the assessee is directed against the order of the

1d. CIT (Appeals)-22, New Delhi pertaining to AY 2015-16.

2. The grounds of appeal taken by the assessee read as under :-

“1. The Ld. CIT (A) has erred on facts of the case and in law in confirming the disallowance of 50% of the expenses on account of interest on loans received from the bankers for working capital requirements.

2. The Ld. CIT (A) has erred on facts of the case and in law in arriving at the conclusion that the loan given to the sister concern was in the guise of a trade debt and that the business expediency of the transaction was not proved.”

3. Brief facts of the case are that assessee is engaged in the business of rental trading of pharmaceutical products. In the present case, Assessing Officer (AO) made proportionate disallowance of interest on ad hoc basis after noting that assessee had both interest bearing funds and interest free funds at his disposal. The order of AO in this regard can be gainfully read as under :-

“3.2 The assessee did not file the details in this regard and failed to specify the source and Purpose for which huge loans were given to Guardian Lifecare Pvt. Ltd. which held 19.7% of the assessee's equity share capital and was part of the same group. The sundry debtor in the name of this company was also not a trade debt but a loan from the assessee keeping in view the fact that it amounted to more than the sale during the year. The assessee had both interest bearing funds and the interest-free funds at its disposal. The assessee has claimed interest expense of Rs.2,49,97,235/- and shown interest income of Rs.2,03,19,763/- from related parties in its profit and loss account. In these circumstances and in the absence of any detail by the assessee to prove that interest free loan/advance to Guardian Lifecare P. Ltd. are for the business purpose. In view of the foregoing, it is concluded that the loans were non-business and given both out of interest-bearing funds and interest free funds. Therefore, 50% of interest expenses of Rs.2,49,97,235/- claimed by the assessee, amounting to Rs.1,24,98,617/- is hereby disallowed for being in interest cost incurred in giving loans to related parties over and above the interest recovered from them.”

4. Upon assessee's appeal, Id. CIT (A)'s confirmed the addition by holding as under :-

“5.5 The fact of the case that disallowance of interest has been made by the AO in earlier years also. The Ld. CIT(A)-18, Delhi has partly allowed on this account for A.Y. 2011-12 & 2012-13. The CIT(A)-35 has allowed for A.Y. 2014-15. The facts emerging out from the assessment order and annual accounts of the assessee:

- i. Trade receivable has gone up from Rs.71.05 crores to Rs.105.90 crores Aprox.
- ii. Term loan taken from the bank has increased from Rs.6,45,00,000/- to Rs.14,98,32,276/-.

- iii. The appellant has also availed cash credit facility from bank of Rs.4,92,91,957/-.
- iv. Loan to related party has gone down from Rs.2,76,83,261/- to Rs.2,03,19,763/-. However trade debt from related party has gone up substantially.

5.6 The Ld. AR has not been able to explain where the loan and the cash credit facility availed from bank has been utilized. The AO has given categorical finding that the trade debt in the name of group concern M/s Guardian Life Care Pvt. Ltd was not a normal trade debt, in view the fact that the total sales of the assessee during the year amounted to Rs.58.61 crore during the F.Y. 2014-15 and Rs.36.86 crore during the financial year 2013-14 and amount shown as trade debt in the name of this concern is more than the total amount of sales. These facts further strengthen the finding of the AO that the loan advanced to group concern in the guise of trade debt. The complete picture in the form of inter group transaction has not been submitted by the Ld. AR. Therefore, in absence of complete correlation in utilization of interest bearing fund with trade debt and the advances given to group concern, it can be said that the appellant has not been able to prove the business expediency of the transaction.”

5. Against the above order, assessee is in appeal before us. We have heard ld. DR for the Revenue and perused the records. None appeared on behalf of the assessee despite issuance of notice.

6. Upon careful consideration, we note that the disallowance has been made on ad hoc basis on the plank that interest bearing funds have been diverted. This was done by the AO despite noting that assessee had interest bearing funds as well as interest free funds. It is settled law that if assessee has sufficient interest free funds the right of attribution lies with the assessee and AO cannot insist upon one to one nexus between the funds. This view is duly corroborated by Hon'ble Mumbai High Court in the case of CIT vs. Reliance Utilities & Power Ltd. 313 ITR 340 and CIT vs. HDFC Bank Ltd. 366 ITR 505.

This aspect needs to be considered by the AO in making the disallowance which has not been done.

7. Furthermore, authorities below have shown that there is abnormal increase in sale to related parties, hence the debt is not normal. In our considered opinion, this plank is not acceptable as Revenue authorities are accepting the sales and no disallowance has ever been done in this regard. Moreover, the genuineness of the debtors cannot be doubted without any enquiry in this regard. In this view of the matter, in our considered opinion, the matter needs to be remitted back to AO. AO is directed to decide the issue afresh in the light of our observation herein above.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 23rd day of June, 2022.

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 23rd day of June, 2022
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-5, New Delhi
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.
