

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH :F: DELHI)**

**BEFORE SHRI C.M. GARG, JUDICIAL MEMBER &
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 1150/Del/2018
Assessment Year: 2011-12**

Rishabh Birla, L/H Late Shri Anurag Birla C/o Sandeep Sapra, Adv. C-763, New Friends Colony, New Delhi. (PAN:PDYPB0301D)	Vs.	JCIT, Range-24, New Delhi
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Sandeep Sapra, Adv.
Respondent by : Ms. Sunita Verma, CIT- DR

Date of Hearing : 12.09.2023
Date of Pronouncement : 18.09.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of learned Commissioner of Income-tax(Appeals)-11, New Delhi, Appeal No.387/13-14 dated 24.11.2017 against the order under Section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 30.01.2014 passed by JCIT, Range-24, New Delhi for the assessment year 2011-12.

2. Assessee has taken 10 grounds including 9 sub-grounds numbered as 1(a) to 1(i) on account of various disallowances made by the learned Assessing Officer and confirmed by the learned Commissioner of Income-Tax(Appeals).

3. Before us, learned counsel submitted that ground nos.1(b) and 1(e) to 1(i) are not pressed. Accordingly, these grounds are dismissed a not pressed.

4. Learned counsel is effectively representing the matter on three grounds, namely, ground no. 1(a) which is in respect of disallowance of interest under Section 36(1)(iii) attributable to borrowed amount of Rs.68,00,000 utilized for purchase of shop and allegedly not used for business purposes; ground no.1(c) in respect of disallowance of Rs.1,16,05,230 on account of rebate and discount and ground no.1(d) in respect of disallowance of Rs.24,03,501 on account of commission expenses. We deal with these three grounds seriatim.

5. In respect of ground no.1(a), learned Assessing Officer has made a disallowance of Rs.38,29,320 by holding that assessee has not utilised the loan funds for business purposes but diverted them for acquiring immovable property, for giving advances against properties and for the purpose of interest free loan and advances to sister concerns, family members. In the first appellate proceeding, learned Commissioner of

Income-Tax(Appeals) deleted an amount of Rs.14,24,034 and for the balance amount of Rs.24,05,286 directed the learned Assessing Officer to disallow the interest related to Rs.68,00,000 which was paid to the seller directly. He directed the learned Assessing Officer to recompute the disallowance by restricting it to the interest relatable to Rs.68,00,000. This direction by him is based on decision taken in earlier years.

5.1 Before us, learned counsel at the outset, submitted that this issue is squarely covered by the decision of coordinate Bench of ITAT Delhi in assessee's own case in the immediately preceding year i.e. assessment year 2010-11 in ITA No.1933/Del/2016 dated 30.09.2020. In the said decision, it is noted that for assessment year 2008-09 and 2009-10, this issue was restored to the file of the Assessing Officer and the learned Commissioner of Income-Tax(Appeals), respectively, with the direction to recompute the interest attributable to Rs.68,00,000. In assessment year 2010-11 also, learned Commissioner of Income-Tax(Appeals) had given direction to the Assessing Officer to recompute the interest attributable to Rs.68,00,000. The co-ordinate Bench did not find any error in the finding of the learned Commissioner of Income-Tax(Appeals) and thus upheld it in giving such direction to the Assessing Officer. The relevant finding in this respect is reproduced as under:

"5.0 We have heard the rival submissions and have also perused the material on record. As far as ground No.1 of the assessee's appeal is concerned, it is seen that the total disallowance of interest made by the Assessing Officer was to the tune of Rs.26,05,634/- being interest in respect

of properties at Saket and Gurgaon. When the matter came in appeal before the Ld. CIT (A), the Ld. CIT (A) deleted the disallowance to the tune of Rs.16,21,755/- in respect of the Saket Property. However, with respect to the interest disallowance pertaining to the Gurgaon property, the Assessing Officer was directed to re-calculate the disallowance by restricting it to interest portion related to Rs.68.00 lacs. It has been brought to our notice that in Assessment Years 2008-09 and 2009-10, the issue was restored to the file of the Assessing Officer and the Ld. CIT (A) respectively with the direction to re-compute the interest attributable to Rs.68.00 lacs. We find that a similar direction has been given by the Ld. CIT (A) in this year also wherein the Ld. CIT (A) has directed the Assessing Officer to re-compute the interest attributable to Rs.68.00 lacs. Thus, there is no error in the finding of the Ld. CIT (A). In fact this is the relief which the assessee has also prayed for in its Ground No.1 and has also argued before us. Therefore, we uphold the finding of the Ld. CIT (A) in giving such direction to the Assessing Officer.”

5.2 Since, there is no change in the material fact in respect of the issue before us and considering the Rule of Consistency, we also follow the findings given by the coordinate Bench in the assessee's own case (supra) to recompute the interest attributable to Rs.68,00,000 in terms of directions given by the learned Commissioner of Income-Tax(Appeals) to the learned Assessing Officer. Accordingly, this ground of the assessee is allowed for statistical purposes.

6. In respect of disallowance on account of rebate and discount, assessee had claimed an amount of Rs.1.16 crores under this head. Learned Assessing Officer observed that since the genuineness of claim has not been established, this amount was disallowed. Learned Commissioner of Income-Tax(Appeals) confirmed the said disallowance.

6.1 Learned counsel submitted that, though, this amount had been claimed under the head “rebate and discount” this, in fact, is in the nature of bad debts allowable under Section 38(1)(vii). He referred to the financial statement to point out that assessee had earned income from

cargo transportation amounting to Rs.40,70,82,510 during the year. Copy of ledger account of all the parties against which these bad debts claimed were also placed on record to demonstrate that their accounts have been duly credited for the impugned claim. Learned counsel also claimed that for most of the parties, these are running account wherein assessee is raising bills and receiving the payments. However, there are certain transactions with these parties which undergo dispute and therefore, becomes irrecoverable. Hence, such irrecoverable amounts are claimed as bad debts under the nomenclature of rebate and discount. Learned counsel referred to the ledger of "rebate and discounts" to corroborate the contentions made by him. He placed reliance on several judicial precedents to buttress the submissions so made.

6.2 From the perusal of the ledger accounts and details, furnished and referred by the learned counsel forming part of the paper book, we find it proper to remit the matter back to the file of the learned Assessing Officer for the limited purpose of verification of the claim of bad debts made by the assessee and be allowed in accordance with the provisions of the Act and judicial precedents referred by the learned counsel. Accordingly, this ground is allowed for statistical purposes.

7. Ground no. 1(d) is in respect of disallowance of commission expenses of Rs.24,03,510 incurred by the assessee on freight and

brokerage. Learned Assessing Officer had called for details including copies of agreement, particulars of business transaction, evidences of services provided by the commission agents, details of business procured through commission as well as identification and confirmation of the concerned party to whom commission was paid. Learned Assessing Officer having not satisfied with the submissions made by the assessee disallowed this claim of expenditure which was confirmed by the learned Commissioner of Income-Tax(Appeals).

7.1 Before us, learned counsel submitted that assessee is a clearing and forwarding agent and provides services relating to air-cargo and flight handling. Assessee has incurred commission expense on which TDS was done and service-tax was also paid. Learned counsel referred to party-wise details of commission paid along with their names, address, PAN etc. He also submitted that payments were made through banking channels. Also, a comparative chart of commission paid was furnished for assessment years 2009-10 to 2011-12 which had been subjected to scrutiny assessment under Section 143(3) wherein no such disallowance was made. Learned counsel, thus, claimed application of Rule of Consistency in this respect, there being no material change in the business model and operations of the assessee.

7.2 In this respect, on a specific query by the Bench, as to details of services rendered for the commission payments, learned counsel submitted that there are plethora of documents by which this can be substantiated. He prayed for remitting this matter back to the file of learned Assessing Officer where all such record can be furnished for his verification.

7.3 Considering the material on record and submission made by the learned counsel, we are inclined to remit the matter back to the file of the learned Assessing Officer on this issue for the limited purpose of verification of the claim made by the assessee and its allowance in accordance with the provisions of the Act. Accordingly, ground taken by the assessee is allowed for statistical purposes.

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

Order is pronounced in the open court on 18.09.2023.

Sd/-

**(C.M. Garg)
Judicial Member**

Sd/-

**(Girish Agrawal)
Accountant Member**

Dated: 18th September, 2023
Mohan Lal

Copy forwarded to:

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

By Order

Assistant Registrar
ITAT, Delhi Benches, New Delhi