

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

AND

SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No. 2238/Hyd/2018 Assessment Year: 2014-15		
M/s. Srinath Agencies, Secunderabad. PAN AAQFS 3447M	Vs.	Dy. Commissioner of Income Tax, Circle 10(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Shri Siddharth Toshnival.
Revenue by:		Shri Rohit Majumdar (D.R)
Date of hearing:		13/05/2021
Date of pronouncement:		03/09/2021

O R D E R

Per L.P.Sahu, A.M. :

This is an appeal filed by the assessee against the order passed by Commissioner of Income Tax (Appeals)-6, Hyderabad dt.1.8.2020 in ITA No.0400/ 2016-17 / A3/CIT(A)-6 on the following grounds of appeal :

On the issue of addition of notional Interest Income of Rs.13,50,000/-: Tax effect 4,17,150/-

- 1) The learned Commissioner (Appeals) erred in confirming the addition of notional interest income of Rs.13,50,000/- on interest free advance made to Shri Arun Agarwal of Rs.34,00,000/- and Smt. Neha Agarwal of Rs.56,00,000/-
- 2) That the learned Commissioner erred in rejecting the contention of Appellant that interest was not charged due to commercial expediency as above persons are Director and Promoter of M/s Suryajyothi Spinning Mills Limited which is a major customer of Appellant for Polyester Staple Fibre (PSF) product sold by Appellant.
- 3) That the learned Commissioner (Appeals) erred in holding that interest bearing funds were used for the purpose of giving interest free sums to aforesaid parties.
- 4) That the learned Commissioner (Appeals) erred in rejecting the Appellant's contention that there is no provision under the Income Tax Act for addition of notional interest income.
- 5) That the learned Commissioner (Appeals) erred in ignoring the Appellant's contention that addition of notional interest income is against the principle of consistency as no such addition was made in the past assessment years.
- 6) That the various case laws cited by the learned Commissioner (Appeals) have no application to facts of Appellant's case as the parties to whom interest free funds were given by Appellant are not related parties/sister concerns.

On the issue of disallowance of commission and Incentives of Rs.49,68,341/-: Tax Effect 15,35,217/-

- 7) That the learned Commissioner (Appeals) erred in confirming the disallowance of commission and incentive of Rs.39,53,612/- paid to Aman Tubes Private Limited on PET Products and Rs.10,14,729/- paid to Suryaoday Spinning Mills Private Limited on PSF Products.
- 8) That the learned Commissioner (Appeals) erred in holding that no services were rendered by Aman Tubes Private Limited so as to warrant payment of commission.
- 9) That the learned Commissioner (Appeals) erred in holding that M/s Aman Tubes Private Limited cannot be allowed on the ground that it is engaged in business of Software publishing consultancy and supply thereof.
- 10) That the learned Commissioner (Appeals) erred in holding that commission paid to Suryaoday Spinning Mills Private Limited cannot be allowed as it was on its own purchases ignoring the fact that merely because the commission was paid for own purchases would not disentitle an agent to receive commission

11) The learned Commissioner (Appeals) erred in holding that the expenditure cannot be allowed in terms of Section 40A(2) (a) of Income Tax Act as M/s. Suryaoday Spinning Mills Private Limited is a related party.

12) Any other Ground of Appeal that may be raised subsequent to the filing of appeal.”

2. The brief facts of the case are that the assessee is a partnership firm and filed Return of Income for the Assessment Year 2014-15 on 4.10.2014 declaring total income of Rs.31,70,640. The case was selected for scrutiny and other statutory notices were issued to the assessee. The assessee was a *Del Credere* agent for Reliance Industries Ltd. and has undertaken the responsibility of collecting the amounts due to Reliance Industries, receives commission on the sales made by Reliance Industries as per the agreement entered into by the assessee-firm. It was observed that the assessee had paid interest amounting to Rs.51,37,080 to Bank and Rs.49,34,457 on "interest on unsecured loans" to others. It was submitted by the assessee that it has extended advances and loans of Rs.5,67,500 to Ms. Nidhi Karwa; Rs.34 lakhs to Mr. Arun Agarwal and paid Rs.56 lakhs to Ms. Neha Agarwal. The assessee had admitted that the interest was charged @ 15% on loan given to Ms. Nidhi Karwa as income and it was observed that all these loans were paid in the earlier year in regard to interest free loan given to Ms. Arun Agarwal and Ms. Neha Agarwal. When the assessee was asked as to why it has not charged interest on loan to these two persons, in reply on 20.6.2002, the assessee stated that it was the opening balance and further submitted that at the time of proceedings for the Assessment Year 2012-13, it was stated that the assessee had not charged interest as these advances were given for a business proposal which did not materialize. The Assessing

Officer was not satisfied with the reply and applied 15% rate of interest which was charged and calculated the interest on loan of amount of Rs.90 lakhs. Further the Assessing Officer observed that the assessee had claimed commission expenses which had been paid to M/s. Amman Tubes Pvt. Ltd. of Rs.39,52,553 and Rs.10,14,729 to M/s. Suryauday Spinning Mills Limited. The information was called for u/s. 133(6) of the Act from these two parties. M/s. Suryauday Spinning Mills Ltd furnished that they had not received any commission from the assessee, but, received an amount of Rs.10,14,729 as incentive being purchase incentive on purchases of Rs.58.90 Crores made from the assessee and he had submitted agreement with the assessee's firm. He was appointed as sub-agent for marking of the product of Reliance Industries. The terms and conditions are as under :

- i) You will be informing the Mills about the prices of the Poly Staple Fibre (PSF) as and when they are informed to you and collecting Mills monthly requirements.*
- ii) You will be collecting the payment as well as Central Sales Tax forms against the order placed by the Mills.*
- iii) We shall pay you the commission @ Rs.150/- per ton and further incentive on the basis of sales / turnover achieved by you.*

3. The Assessing Officer relied on many judgments as quoted by him in his order and accordingly, disallowed the claim of the assessee. In addition to the above addition, the Assessing Officer had also made other additions. Against the order of the Assessing Officer, the assessee filed appeal before the CIT(A).

The CIT(A) after detailed discussions in his order, partly allowed the appeal of the assessee. Aggrieved by the order of CIT(A) the assessee is in appeal before the ITAT.

4. The learned authorised representative reiterated the submissions made before the lower authorities and submitted that there was a commercial expediency in regard to the loan given to two persons as mentioned above. It is immaterial as to whether the project was not come into existence or not. He relied on the case law Highways Construction Co. P. Ltd. Vs. CIT (1993) 199 ITR 702 (Gau). He further submitted that the Assessing Officer cannot calculate the notional interest on the interest free advance given to two persons amounting to Rs.90 lakhs. Further in respect of commission payment, he stated that the TDS has been deducted on payments made to them at the applicable rates and the payments have been made through banking channel and therefore it cannot be said that the assessee's claim is not a genuine transaction. He further submitted that the reply submitted by the recipients was related to the previous assessment year whereas the AO has considered and applied the same for the impugned assessment year is also not correct.

5. On the other hand, the learned departmental representative relied on the order of authorities below and

submitted that the assessee could not prove any commercial expediency and the loan was not given to any subsidiary paid out by the assessee. It does not have sufficient funds to make out the loan given in the earlier year. He submitted that the Assessing Officer has rightly charged interest as equal to loan given to Ms. Nidhi Karwa and interest payment to bank. He submitted that there is no ambiguity in the order of the authorities below in this regard. He submitted that the CIT(A) has rightly applied the case laws, which are applicable in the present facts of the case on hand. On this issue, the ld. AR has relied on Hon'ble Gauhati High Court (supra) is also not applicable to the facts of the case on hand. Further in respect of commission paid, he submitted that merely payments to through banking channels and deducting TDS is not a genuine expenditure incurred by the assessee. The Assessing Officer and CIT(A) had rightly analysed the issue involved. He also submitted that as per the agreement entered with Reliance Industries Limited, commission cannot be paid to others with the prior approval.

8. Considering the rival submissions from both the parties and perusing the material on record as well as the orders of the revenue authorities, the sole grievance of the assessee is that the notional interest charged by the Assessing Officer on loan given to Shri Arun Agarwal and Smt. Neha Agarwal amounting to Rs.90,00,000/- [Rs.34,00,000 and

Rs.56,00,000]. While calculating notional the notional interest income, the Assessing Officer has considered the interest rate on advance given to Nidhi Agarwal @ 15% as income on loan given to Shri Arun Agarwal and Smt. Neha Agarwal and calculated interest income @ 15% on the outstanding balance of Rs.90,00,000 which comes to Rs.13,15,000/- is not proper because the notional interest cannot be calculated by the Assessing Office without any agreement made by lender and borrower. In the case under consideration, there is no such findings . If the Assessing Officer finds that the assessee has diverted the borrowed funds for other than business purpose, he can disallow the interest paid to the bank on interest free loan given and addition can be made as per section 36(1)(iii) of the Act.. Therefore the addition made by the Assessing Officer is deleted. The grounds raised by the assessee in this regard Ground Nos.1 to 6 are allowed.

9. Further in respect of Ground Nos.7 to 11, there was a disallowance made in respect of commission and incentive paid to M/s. Aman Tubes Pvt. Ltd. and M/s. Surayauday Spinning Mills Private Limited. The authorities below have made detailed observations/findings, but, we notice that Surayauday Spinning Mills Private Limited has submitted a letter before the Assessing Officer for Assessment Year 2012-13 whereas the assessment pertains to Assessment Year 2014-15 and in case of Aman Tubes Pvt. Ltd., the CIT(A) has

doubted the services rendered as sub-agent. The assessee has made payment through banking channel and deducted TDS accordingly. Considering the facts and circumstances of the case, we deem it fit to remit the matter to Assessing Officer for limited purpose of verification to justify the services rendered by the sub-agent during the impugned assessment year and the assessee is directed to produce all the relevant documents for substantiating its claim and directed to avoid unnecessary adjournment and the Assessing Officer is directed to provide reasonable opportunity of hearing to the assessee. These grounds are allowed for statistical purpose.

10. We lastly acknowledge that although the instant appeals are being decided after a period of 90 days from the date of hearing as per Rule 34(5) of the IT(AT) Rules 1963, the same however, does not apply in the covid lockdown situation as per hon'ble apex court's recent directions dated 27-04-2021 in M.A.No.665/2021 in SM(W)C No.3/2020 'In Re Cognizance for extension of limitation' making it clear that in such cases where the limitation period (including that prescribed for institution as well as termination) shall stand excluded from 14th of March, 2021 till further orders.

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

Order pronounced in the open court on 3rd Sept., 2021.

Sd/-

(S.S. GODARA)

Judicial Member

Hyderabad, Dt.03.09.2021.

Sd/-

(L.P. SAHU)

Accountant Member

* Reddy gp

Copy to :

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2.	DCIT, Circle 10(1), Hyderabad.
3.	Pr. C I T-6, Hyderabad.
4.	CIT(Appeals)-6, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File.