आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
' A' BENCH : CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष
एवं **एस जयरामन**, लेखा सदस्य

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER &
SHRI S.JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./**I.T.A.No.1147/Chny/2019**
निर्धारण वर्ष /Assessment year : 2015-16

M/s.Rajkham Builders Pvt Ltd., New No.12,Old No.3, Zackaaria Colony,3rd street, Chollai Medu, Chennai 600 024. **[PAN AADCR 9485 Q]** **(अपीलार्थी/Appellant)**	**Vs.**	The Income Tax Officer, Corporate ward 5(4), 121 M G Road, Chennai 600 034. **(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by	:	Mr.G.Baskar, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Mr.AR. V.Sreenivasan,JCIT, D.R
सुनवाई की तारीख/Date of Hearing	:	21.01.2020
घोषणा की तारीख /Date of Pronouncement	:	13-03-2020

आदेश / O R D E R

PER S.JAYARAMAN, ACCOUNTANT MEMBER

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)-3, Chennai in ITA No.25/2017-18/A-3, dated 27.03.2019 for the assessment year 2015-16.

2. The assessee, M/s.Rajkham Builders Pvt Ltd., is engaged in the business of construction and flat promotion. While completing the assessment for the assessment year 2015-16, the Assessing Officer made disallowances under Sections 36(1)(iii), 40A(3) and donations under Section 37 of the Income Tax Act, 1961 (in short 'the Act') and completed the assessment. Aggrieved, the assessee filed an appeal before the CIT(A). The Ld CIT(A) dismissed the appeal. Aggrieved against that order, the assessee filed this appeal.

3. The assessee has taken various grounds in the grounds of appeal. However, at the time of hearing, the assessee argued on the following issues only and hence, each of the issues is narrated below and disposed off accordingly.

4. The Ld. A.R. submitted that the assessee made interest free advances to its sister concern, M/s.Rajkham Infra P. Ltd.,during the year under consideration were utilized solely for the purpose of benefiting the business of the assessee. The assessee and its sister concern were in the same business and hence, there is no question of diversion of funds. Therefore, Ld. A.R. submitted that the disallowance made by the A.O. and sustained by the learned CIT(A) is not correct. Hence Ld. A.R. pleaded to allow the assessee's plea on this ground.

5. Per contra Ld. D.R. submitted that the assessee has clearly disclosed in its Audited Accounts that M/s.Rajkham Infra P. Ltd., is a

related party. The Assessing Officer has found that the assessee has given ₹ 5,66,75,198/- to its subsidiary, M/s.Rajkham Infra P. Ltd., during the year without charging any interest. The assessee has claimed interest expenditure at ₹.2,16,45,310/-, which was paid towards project loan obtained from LIC Housing Finance Ltd., Working Capital and Credit Facility obtained from State Bank of India, Axis Bank and Indian Overseas Bank. The A.O was of the view that when the assessee company itself obtained loan for its projects, diverting its fund to subsidiary without charging any interest is not in order and hence, he disallowed the proportionate interest on the impugned loan under Section.36(1)(iii) of the Act. The A.O has also examined the ledger account of M/s.Rajkham Infra P. Ltd., standing in the books of the assessee and found that funds received from the assessee company are used for the purpose of project at Madurapakkam Project undertaken by its sister concern and the entire expenses was incurred towards them. The A.O. noticed that the assessee company gave interest free funds to its subsidiary to meet out subsidiary's expenditure whereas its subsidiary has not done any contract work or supply of goods or materials to the assessee company. Further, the assessee company has not produced any evidence to show that it has benefitted in any way from the funds advanced to its sister concern. When the A.O. perused the P&L A/c, he noticed that the assessee company has disclosed a meager profit of ₹.10.41 lakhs from its operations, which is just 1.24% only. Therefore, the A.O. held that one of the reasons for such low profit is on account of higher interest cost to the assessee. Had there been no diversion of interest bearing funds to its sister concern, the assessee must have disclosed the higher profit. Therefore, the A.O. held that there is no commercial expediency in the impugned transaction. The entire facts and circumstances disclosed that assessee company has diverted funds to its sister concern for non business purposes. Therefore, the Ld. D.R. submitted that the disallowance made by the A.O. is in accordance with the established procedure. On appeal, the learned CIT(A) applying the ratio laid down by the Hon'ble Apex Court in the case of CIT Vs. Chandulal Keshavlal & CO., reported in (1960) 38 ITR 601, 610(SC), has confirmed the disallowances made by the A.O., although the learned CIT(A) has directed the A.O. to examine whether the percentage of interest at which the disallowance is justified on the facts and circumstances of the case and accordingly, modified the disallowance. Therefore, Ld. D.R. supported the orders of the lower Authorities and pleaded that the corresponding grounds of the assessee be dismissed.

6. We have heard the rival submissions and perused the material available on record. It is clear from the above facts and circumstances

of the case that the assessee has borrowed interest bearing funds and claimed the corresponding interest as expenditure. It advanced interest free loan to subsidiary concern but has not established the commercial expediency on the transaction with its sister concern. The assessee has not placed any material even before us to prove that the impugned transaction was undertaken on commercial consideration. Therefore, we uphold the disallowance made by the A.O. and sustained by the learned CIT(A) subject to verification as directed by the learned CIT(A). Therefore, the corresponding grounds of the assessee on this issue fail.

7. The next issue is relating to disallowance of ₹.4,56,471/- under Section 40A(3) of the Act. During assessment proceedings, the A.O. on verification of the cash book of the assessee has identified the following items for disallowance.

Nature of expenditure	Amount in ₹
Pooja expenses	21,763
Gift purchase for Ayuda Pooja	57,828
Payment to Emmkay Associates –labour contractors	1,18,190
Payment to Rajshree Associates – Labour Contractors	1,18,190
Cash Purchases	32,300
Sivaranjini Contractor	21,300
Pachyappan - Masonary	48,300
Shanmugam -Centring	38,600
Total	**4,56,471**

Aggrieved, the assessee preferred an appeal before the learned CIT(A). On appeal, learned CIT(A) dismissed the assessee's plea.

8. In this regard, the Ld. A.R. submitted that expenditure incurred towards Pooja expenses include purchase of sweets, God picture, serial lights and certain expenditure incurred towards water bottles, breakfast and other material from the local road side shops. There is no single payment, which is exceeding ₹20,000/- and the aggregate expenditure claimed by the assessee was at ₹21,763 only under this Head.

8.1 With regard to staff welfare expenses, according to the Ld. A.R that this expenditure was incurred for buying gifts to the staff on certain occasion of Ayudha Pooja etc., and no single payment is exceeded ₹20,000/-, although an aggregate expenditure of ₹57,828/- was claimed by the assessee. Similar expenses were made towards cash purchases and expenditure incurred towards Sivaranjini Contractor, etc., which are wholly and exclusively incurred for the assessee's business as per the material placed in the paper book and hence, pleaded to allow the appeals. Per contra, Ld. D.R. supported the orders of the lower Authorities.

9. We have heard the rival submissions and perused the material available on record. We find that the expenditure incurred under the head "Pooja expenses", gift purchases for Ayudha pooja, cash purchases, Sivaranjini Contractor", could be allowed as business expenditure, towards which incurring of cash expenditure could be justified. Therefore, we direct the A.O. to allow these expenses. With regard to payments made under the following heads, Rajshree Associates-labour contractors, Emmkay Associates-labour contractors, Pachyappan-Masonary, Sivaranjini Contractor, Shanugam-centring, since the assessee is not able to establish that these payments did not attract the provisions of section 40A(3) of the Act, we are of the view that disallowances made by the A.O. and as sustained by the learned CIT(A) under this heads do not require any disturbances and hence, such disallowances are confirmed. Thus, the corresponding grounds are treated as partly allowed on this issue.

10. The last issue of which the assessee pleaded is disallowance of donations. While making the assessment, the A.O. observed that the assessee made ₹ 1 lakh in favour of Town Planners for getting the business periodical for orchid Project. However, the assessee has not furnished any evidence towards the claim made for ₹1,99,955/-. Therefore, A.O. disallowed and brought to tax. Aggrieved, assessee

filed an appeal before the learned CIT(A). On appeal, learned CIT(A) dismissed the corresponding grounds. In this regard, the Ld. A.R. submitted that the assessee has given ₹.1 lakh as donation to Institute of Town Planners at 63rd , NTPC Congress towards advertisement fees and the assessee has given ₹.50,000/- as donation to Malabar Rehabilitation Centre, which is an institution recognized under Section.80G of the Act, remaining amount was paid towards publicity expenses. The Ld. A.R inviting our attention to page 108 to 109 of paper book and the corresponding receipt placed in the paper book submitted that assessee incurred these expenses as part of its business operations. The lower Authorities have not disputed the genuineness of the expenditure. Therefore, these expenses are incurred wholly and exclusively for the purpose of business and hence, they are allowable as an expenditure under Section 37 of the Act. Hence, Ld. A.R. pleaded that the assessee's plea may be allowed. On the other hand, Ld. D.R. supported the orders of the lower Authorities.

11. We have heard the rival submissions and perused the material available on record. We find that the assessee has incurred the impugned expenses wholly and exclusively for the purpose of business and hence, the disallowance made by the A.O is not warranted. Therefore, we direct the A.O to allow the expenses

claimed by the assessee under Section 37 of the Act. Corresponding grounds of the assessee are allowed.

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

Order pronounced in the open court on 13th March , 2020, at Chennai.

Sd/-	Sd/-
(जॉर्ज माथन)	**(एस जयरामन)**
(GEORGE MATHAN)	**(S. JAYARAMAN)**
न्यायिक सदस्य/JUDICIAL MEMBER	**लेखा सदस्य/Accountant Member**

चेन्नई/Chennai
दिनांक/Dated: 13th March, 2020.
K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF