IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI G. S. PANNU, VP AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.5125/Mum/2015
(**निर्धारण वर्ष** / Assessment Year: 2010-11)

Budhraja Packaging P. Ltd. 82-B, Sanjay Building No-5, Mittal Estate, A.K. Road, Mumbai-400059	**बनाम**/ Vs.	ACIT(OSD)-10(1) Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCB2461J		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Revenue by:	Shri D.G. Pansari (DR)
Assessee by:	Shri Anil Sathe

सुनवाई की तारीख / Date of Hearing: 23.08.2018
घोषणा की तारीख /Date of Pronouncement: 31.10.2018

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 31.07.2015 passed by the Commissioner of Income Tax (Appeals)-24 Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the AY. 2010-11.

2. The assessee has raised the following grounds: -

> *"1. . The learned CIT(A) has erred in making an addition of Rs.2,17,097/- without analyzing and appreciating entire factual matrix of the current case.*
> *2. The learned CIT(A) has passed the order without considering the fact that interest is to be allowed under*

section 36(l)(iii), the tests whereof the appellant fully satisfied.

3. *The learned CIT(A) failed to appreciate that the appellant company had sufficient owned funds for giving advances towards purchase of machinery and no specific funds were borrowed for acquisition of machinery and consequently no disallowance was warranted.*
4. *The learned CIT(A) wrongly concluded that deduction falls under section 37 of the Act without considering the proposition of section 37 which clearly states that the section is not applicable at threshold when expense is covered under sections 30 to 36.*
5. *The learned CIT(A) failed to appreciate that the proviso to section 36(l)(iii) is not applicable at threshold as advance given for purchase of machinery docs not amount to extension of existing business,*
6. *The Ld. CIT(A) erred in not considering the jurisdiction Bombay High Court decisions which clearly establish that the claim of the appellant is bona fide and must be allowed. Further the decisions are cited to establish the legal principle that when the assessee is having sufficient own funds to make investments the investments will be presumed to be made out of own funds and nut out of borrowed funds. Hence; the conclusion of CIT(A) on non-applicability of cited decisions in completely erroneous.*
7. *The appellant craves leave to add, alter or amend any of the grounds of appeal at any time before or at the time of hearing."*

3. The brief facts of the case are that the assessee filed its return of income on 29.09.2010 declaring the total income to the tune of Rs.46,91,170/-. Thereafter, the case was selected for scrutiny. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee is engaged in the business of Offset Printing Press and Typesetter, dealing in Printing Machinery. During the course of assessment, it was noticed that the assessee has paid an amount of Rs.28.61 lacs to M/s.

Herzog and heymanin Gmbh & Co. as advance towards purchase of plant and machinery. The interest upon the said amount is liable to be capitalized. Therefore, the notice was given and after considering the reply, the interest to the tune of Rs.2,17,097/- was disallowed as revenue expenses and added back to the total income of the assessee. The total income of the assessee was assessed to the tune of Rs.62,76,070/- and book profit to the tune of Rs.18,84,608/- and tax @ 15% on book profit to the tune of Rs.2,82,691/- was assessed. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who confirmed the order of the AO, therefore, the assessee has filed the present appeal before us.

4. All the issues are in connection with the confirmation of the addition of Rs.2,17,097/- on account of interest upon the amount of Rs.28.61 lacs paid as advance towards purchase of plant and machinery from M/s. Herzog and heymanin Gmbh & Co.. The AO was of the view that the assessee has paid the advance of Rs.28.61 lacs from the common funds comprising of borrowed and own funds, therefore, proportionate interest expenses must be calculated and is required to be disallowed having direct nexus with the purchase of plant & machinery. The interest was calculated to the tune of Rs.2,17,097/-. The contention of the Ld. Representative of the assessee is that the assessee's own fund is more than the investment, therefore, no interest expenses is liable to be disallowed in accordance with law. Specifically, in view of the law settled in **Reliance Utilities & Power Ltd. (2009) 313 ITR 0340 Bombay High Court), Khoday India Ltd. (2014) 39CCH 0044 Bang Trib) & SRS Ltd. (2016) 47 CCH o121 Del Trib).** However, on the other hand, the Ld.

Representative of the Department has refuted the said contention. The factual position is not in disputed to the facts that the assessee has paid the advance to the tune of Rs.28.61 lacs to M/s. Herzog and heymanin Gmbh & Co. as advance towards purchase of plant and machinery. On appraisal of the assessment order we found that the assessee's own fund is more than the investment. The assessee was having own fund to the tune of Rs.2,11,06,831/- which is excess to the impugned advance. In the case of **Reliance Utilities & Power Ltd. (2009) 313 ITR 0340 Bombay High Court).** It has been held that:-

> *"If there be interest-free funds available to an assessee sufficient to meet its investments and at the same time the assessee had raised a loan it can be presumed that the investments were from the interest-free funds available. In our opinion the Supreme Court in East India Pharmaceutical Works Ltd. (supra) had the occasion to consider the decision of the Calcutta High Court in Woolcombers of India Ltd. (supra) where a similar issue had arisen. Before the Supreme Court it was argued that it should have been presumed that in essence and true character the taxes were paid out of the profits of the relevant year and not out of the overdraft account for the running of the business and in these circumstances the appellant was entitled to claim the deductions. The Supreme Court noted that the argument had considerable force, but considering the fact that the contention had not been advanced earlier it did not require to be answered. It then noted that in Woolcomber's case (supra) the Calcutta High Court had come to the conclusion that the profits were sufficient to meet the advance tax liability and the profits were deposited in the overdraft account of the assessee and in such a case it should be presumed that the taxes were paid out of the profits of the year and not out of the overdraft account for the running of the business. It noted that to raise the presumption, there was sufficient material and the assessee had urged the contention before the High Court. The*

> *principle therefore would be that if there are funds available both interest-free and overdraft and/or loans taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the company, if the interest-free funds were sufficient to meet the investments. In this case this presumption is established considering the finding of fact both by the CIT(A) and Tribunal."*

5. In the case of **ACIT Vs. Khoday India Ltd. Hon'ble ITAT Bangalore Tribunal** has held that in the case where the assessee had made advances to purchase of capital assets or the machinery and other material, the interest paid on such borrowed fund to be allowed u/s 36(1)(iii) of the Act. In view of the above mentioned law, we found that if the assessee has utilized the borrowed fund for the plant and machinery etc. then in the said circumstances also the interest is allowable as revenue expenses in view of the provision u/s 36(1)(iii) of the Act. In the present case also the assessee was having own fund more than the investment, therefore, no doubt the interest is not liable to be disallowed in view of the law settled in **Reliance Utilities & Power Ltd. (2009) 313 ITR 0340 Bombay High Court), Khoday India Ltd. (2014) 39CCH 0044 Bang Trib) & SRS Ltd. (2016) 47 CCH o121 Del Trib).** Observing the factual position in the case from above said angle, we are of the view that the finding of the CIT(A) is wrong against law and facts which is not liable to be sustainable, therefore, we set aside the finding of the CIT(A) on these issues and allowed the claim of interest as revenue expenses. Accordingly, these issues are allowed in favour of the assessee against the revenue.

6. In the result, the appeal filed by the **assessee is hereby ordered to be allowed.**

Order pronounced in the open court on 31.10.2018.

Sd/- Sd/-

(G. S. PANNU) **(AMARJIT SINGH)**
VICE PRESIDENT **JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated : 31.10.2018.
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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**