IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, CHANDIGARH

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND MS. RANO JAIN, ACCOUNTANT MEMBER

ITA No.1153/Chd/2013
(Assessment Year : 2008-09)

The D.C.I.T., Circle III, Ludhiana.	Vs.	M/s Octave Apperals, G.T. Road, Ludhiana. PAN: AAAFO3397G
(Appellant)		(Respondent)

Appellant by : Shri D.S.Sindhu, DR
Respondent by : Shri Sudhir Sehgal

Date of hearing : 14.09.2015
Date of Pronouncement : 16.09.2015

O R D E R

PER RANO JAIN, A.M. :

This appeal filed by the Revenue is directed against the order of learned Commissioner of Income Tax (Appeals)-I, Ludhiana dated 3.9.2013 for assessment year 2008-09.

2. The grounds of appeal raised by the Revenue read as under :

1. That the Ld. CIT(A) has erred in law and facts in deleting the disallowance made by the A.O. u/s 40A(2)(b)of the Income Tax Act, 1961 without appreciating that unsecured loans are freely

available at interest @12% per annum.

2. That the Ld. CIT(A) has erred in law and facts in deleting the disallowance out of shop expensese failing to appreciate that the items purchased by the assessee-stereo system mannequin, air conditioning are items of capital nature and not allowable as revenue expenditure.

3. That the Ld.CIT(A) on facts as well as in law, erred in deleting the disallowance by relying upon the Hon'ble Supreme Court's judgment in the case of CIT Vs Madras Auto Services (P) Ltd. (233 ITR 468(SC)) and a judgment of the Hon'ble Bomby High Court, failing to appreciate that the factsof the present case are entirely different from these cases.

4. That the order of the Ld. CIT(A) be set aside and that of A.O. be restored.

5. That the appellant craves leave to add or amend any ground of appeal before it is finally disposed off.

3. The ground No.1 is in respect of disallowance made by the Assessing Officer under section 40A(2)(b) of the Income Tax Act, 1961 (in short 'the Act').

4. The brief facts of the case are that the assessee had paid interest @ 18% on loans raised from friends and relatives. The Assessing Officer was of the view that the assessee had borrowed funds normally at the rate of 11% to 12% from the banks and other financial institutions. Invoking the provisions of section 40A(2)(b) of the Act, the Assessing Officer concluded that the interest paid to the specified

persons was excessive to the extent of 6% and was attributable to the close relationship with the said persons. This way, disallowance of Rs.7,99,204/- was made by the Assessing Officer.

5. Before the learned CIT (Appeals), the assessee made elaborate submissions as regard to the fact that it has been paying interest @ 18% for the last many years and it was also contended that Assessing Officer has merely compared the presumptive rate of interest charged by the bank @ 12%. The learned CIT (Appeals) agreeing with the contention of the assessee and the various judicial pronouncements relied upon by the assessee wherein even the rate of interest of 24% on unsecured loans has been held to the reasonable allowed the appeals of the assessee and directed the Assessing Officer to delete the addition so made.

6. Aggrieved by the said order of the learned CIT (Appeals), the Revenue is in appeal before us. During the course of hearing, it was brought to our notice that since the assessee has been charging the same rate of interest for so many years, similar issue came in appeal before the Chandigarh Bench of ITAT in assessee's own case for assessment year 2009-10 in ITA No.1064/Chd/2012 dated 25..9.2013. Our attention was invited to page 6, para 11 of the said order, which reads as under :

> *"11. We have heard the rival contentions and perused the record. Under the provisions of section 40A(2)(a) of the Act, it is provided that where the assessee incurs any expenditure in*

respect of which the payment has been made to specified persons under clause (b) to section 40A(2) of the Act, then where the Assessing Officer is of the opinion that such expenditure is excessive or unreasonable having regard to the market value of the goods, services or facilities, then such excess expenditure cannot be allowed as a deduction. The assessee in the present set of facts had made borrowings from its family members/relatives of directors, on which the rate of interest paid was 18% as in the earlier years. The said rate of interest has been accepted in the earlier years. However, under the provisions of the Act i.e. section 40A(2)(a) of the Act, it is the market value of the goods, services or facilities, which is to be considered while allowing the claim of expenditure in respect of the payments being made to specified persons under clause (b) of the said sub-section. The rate of interest at 18% in the present market scenario is excessive and we deem it fit to reduce it to 15% per annum. Accordingly, Assessing Officer is directed to recompute the disallowance in this regard. The ground No. 2 raised by the revenue is, thus, partly allowed."

7. Since no new facts distinguishing the case with that of the earlier year were brought to our notice during the course of hearing, respectfully following the order of the ITAT Chandigarh Bench in assessee's own case, for earlier years, we also deem it fit to reduce the rate of interest to 15% per annum. Accordingly, the Assessing Officer is directed to recomputed the disallowance in this regard.

8. The ground Nos.2 and 3 relate to disallowance made by the Assessing Officer on certain items purchased by the assessee holding the same to be capital in nature as against the revenue treated by the assessee.

9. The brief facts of the case are that the assessee incurred expenses to the tune of Rs.1,75,762/- on purchase of stereo systems, mannequins and air conditioner. The assessee had claimed these expenses in its Profit & Loss Account treating the same as revenue in nature. The Assessing Officer after considering the explanation of the assessee treated the said expenses to be in the nature of capital and disallowed the same. However, the depreciation at applicable rates were allowed to the assessee. This way, an addition of Rs.1,55,087/- was made by the Assessing Officer.

10. Before the learned CIT (Appeals), it was submitted by the assessee that the Assessing Officer has wrongly treated the renovation of shop expenses as capital in nature, whereas the assessee firm is not the owner of the shop and has taken it on rent. It was also contended that the expenses incurred on shop renovated by the assessee are of revenue in nature. Reliance was placed on a number of judicial pronouncements. The learned CIT (Appeals) found himself in agreement with the submissions of the assessee and he was of the view that no capital asset has come into existence as the premises in question are rented and not self owned. Further, it was held that the judicial pronouncements relied upon by the assessee are squarely on the issue and there is nothing to hold that the said enduring benefit would amount to capitalization. This way, addition made by the Assessing Officer was directed to be deleted.

11. Now, the Department has come up in appeal before us. The main contention of the learned D.R. was that these expenses relating to stereo systems, mannequins and air conditioner are capital in nature. Assets giving benefit of enduring nature have been created by incurring these expenses. Reliance was placed on the order of the ITAT Mumbai Bench in the case of Vardhman Developers Ltd. Vs. ITO, Mumbai in ITA No.6820/Mum/2012 dated 4.2.2015.

12. The learned counsel for the assessee submitted that the assessee firm is engaged in the business of manufacturing and trading of garments and clothes. It was also submitted that the assessee is having retail show room of readymade garments. The assessee is dealing in fashionable items and the expenses on purchase of stereo systems, mannequins and air conditioner were required to run the day-to-day business of the assessee. In this background, it was submitted that these expenses are revenue in nature and no asset of enduring nature has been created by these expenses.

13. We have heard the rival contentions and perused the material available on record. It is an admitted fact that the assessee is engaged in the business of fashionable readymade garments. It also runs retail show room of these garments. The fact that the business was being run at the rental premises is immaterial to decide the issue whether the expenditure is capital or revenue in nature. In the retail

business of garments, in today's time of tough competition, one has to maintain the showroom in quite a presentable state in order to attract the customers. Keeping the mannequins to display the garments, stereo to play the music and air conditioner to keep the showroom cool are the requirements for day-to-day running of the business. Looking to the nature of business carried on by the assessee, it cannot be said that the expenditure on things like stereo systems, mannequins and air conditioner will bring any asset of any enduring nature. On this basis alone, these expenses cannot be treated as capital in nature.

14. In the result, the appeal of the Revenue is partly allowed.

Order pronounced in the open court on this 16th day of September, 2015.

Sd/-	Sd/-
(BHAVNESH SAINI)	**(RANO JAIN)**
JUDICIAL MEMBER	**ACOUNTANT MEMBER**

Dated : 16th September, 2015

Rati

Copy to: The Appellant/The Respondent/The CIT(A)/The CIT/The DR.

Assistant Registrar,
ITAT, Chandigarh