

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

I.T.A. No. 282/Ahd/2024
(Assessment Year: 2016-17)

BPS Mineral Exports Pvt. Ltd., 8, 1 st Floor, Arjun Complex, Nr. Saurabh High School, Nava Wadaj, Ahmedabad-380013	Vs.	Income Tax Officer, Ward-1(1)(2), Ahmedabad
[PAN No.AAECB1952D]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Tushar Hemani, Sr. Adv. & Shri Praimalsinh B. Parmar, A.R.
Respondent by :	Shri C Dharani Nath, Sr. D.R.

Date of Hearing	30.12.2024
Date of Pronouncement	01.01.2025

ORDER

The appeal filed by the assessee is against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi on 08.05.2023 for A.Y. 2016-17.

2. The grounds of appeal raised by the assessee are as under:

“1. The Hon’ble CIT (A) has erred in law and on facts in confirming the action of the Ld. AO without going on the merit of the case by confirming the addition of Rs. 16,83,705/- towards LC discounting charges. Hon’ble CIT(A) has not considered the fact that the said LC discounting charges were incurred during the year for the course of business whereas the loans and advances were not provided during the assessment year under consideration.

2. The Hon’ble CIT(A) has confirmed the addition of Rs. 16,83,705/- and disallowed the said amount asserting that the appellant had advanced interest free loan to particular party and at the same time charged the “LC discounting charges” debited under the head Finance cost in the profit and loss account of the appellant thereby invoking the provisions of section 26(1)(iii) which is not justified because Hon’ble CIT(A) has not considered the facts of the case and also not going into the

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details of the case of the appellant for the assessment year under question and accordingly the ground taken by the Hon'ble CIT(A) is in complete violation of the Act.

3. *The Hon'ble CIT(A) has grossly erred in confirming addition of Rs. 16,83,705/- u/s 36(1)(iii) of the Act without understanding the facts of the case and also not going into the details of the case of the appellant and thus violated the basic principles of the natural justice. Hon'ble CIT(A) in its order u/s 250 dated 08.05.2023 stated that the appellant company had given interest free loans and advances of Rs. 37,17,11,321/- and disallowed the LC discounting charges of Rs.16,83,705/- on the belief that the same shall be disallowed as the appellant company has given huge interest free loans advances to party. Hon'ble CIT(A) has not considered the fact that the loans and advances were provided in the prior years the accumulated balance of the same is huge.*

4. *Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed."*

3. The assessee company was engaged in the business of local trading of various products such as Cotton Coated Fabric, Dolphine Plain, Basmati Rice Synthetic Thickener and Sulphur etc. The assessee filed its return of income on 29.10.2017 declaring income of Rs. Nil and current year loss of Rs. 2,14,691/-. The assessment was completed at the total income of Rs. 15,47,014/- after making addition of Rs. 17,61,705/- being disallowance under Section 36(1)(iii) being interest bearing funds used for giving huge interest free loans.

4. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. A.R. submitted that the Assessing Officer made disallowance of Rs. 16,83,705/- under Section 26(1)(iii) of the Income Tax Act in respect of "LC discounting charges". The interest free funds /

advances were initially given by the assessee in the past i.e. there was opening balance of such advances and such funds were not diverted towards interest free advances. Thus, the observation of the Assessing Officer is fallacious. The Ld. A.R. further submitted that these advances were business advances and were also given to unrelated parties. The Ld. A.R. submitted that in such a circumstances Section 26(1)(iii) cannot be invoked in the case of business advances. The Ld. A.R. further submitted that the Assessing Officer and the CIT(A) have essentially question necessity of giving interest free advances when assessee is incurring interest expenses. The Ld. A.R. submitted that Revenue Authorities cannot decide as to how in which manner the assessee should conduct his business. The Ld. A.R. relied upon the decision of Hon'ble Apex Court in case of S.A. Builders Ltd. vs. CIT 288 ITR 1 (SC). The Ld. A.R. further submitted that the LC discounting charges will not fall within the ambit of interest and hence, Section 26(1)(iii) cannot be pressed into service. The Ld. A.R. relied upon the decision of Delhi High Court in case of CIT vs. Cargill Global Trading Pvt. Ltd. 335 ITR 94 (Delhi).

6. The Ld. D.R. submitted that the assessee has not furnished the necessary evidences to show that the huge loan and advances are given for purchase of material and there is no basis of such interest free advances when trade payable of Rs. 47,60,31,130/- is pending and interest bearing fund is utilized to pay the creditors. Thus, the Ld. D.R. submitted that the Assessing Officer as well as the CIT(A) has rightly disallowed the claim under Section 36(1)(iii) of the Act.

7. The Ld. A.R. further submitted that there is a delay of 224 days in filing the present appeal due to the medical exigencies of the assessee's wife during the period and the assessee was not able to approach the concerned C.A. within the statutory time for filing the appeal before the Tribunal. Therefore, the Ld. A.R. prayed that the delay may be condoned.

8. Heard both the parties and perused all the relevant material available on record. The reason given for the delay appears to be genuine hence, the delay is condoned. As regards the contentions of the Ld. A.R. that these advances were essentially given by the assessee in respect of the purchase of material was demonstrated by the assessee through the evidences filed before both the authorities i.e. Assessing Officer as well as before the CIT(A). Though, the CIT(A) has given finding that the prudent business man will never give such interest free advances, the fact remains that these are for a purchase of material and it was for conducting the business of the assessee and therefore, the same cannot be stated as certain interest free loan / advances was not rightly disallowed by the Assessing Officer under Section 36(1)(iii) of the Act. In fact, the opening balance of these advances was submitted by the assessee in the details and therefore, the contention of the Ld. A.R. that such funds were not diverted towards interest free advances appears to be justifiable from the records i.e. Tax Audit Report, Financial Statements and the evidence in support of these advances given to the related parties. Thus, the disallowance made by the Assessing Officer as well as confirmed by the CIT(A) is not justifiable in light of the decision of Hon'ble Delhi High Court as well as the Hon'ble Apex Court in cases of

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CIT vs. Cargill Global Trading Pvt. Ltd. (supra) and S.A. Builders Ltd. vs. CIT (supra) respectively. Thus, the appeal of the assessee is allowed.

9. In the result, the appeal of the assessee is allowed.

This Order pronounced in Open Court on	01/01/2025
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Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 01/01/2025

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad