

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'F' NEW DELHI**

**SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
DR. BRR KUMAR, ACCOUNTANT MEMBER**

ITA No. 3777/Del/2016
Assessment Years: 2011-12

DCIT, Circle 2, Meerut.	Vs.	M/s. Sareen Sports Industries, B-2/8, Rajori Garden, New Delhi.
PAN :AABCS9387E		
(Appellant)		(Respondent)

WITH

C.O. No. 290/Del/2016
(In ITA No.3777/Del/2016)
Assessment Year: 2011-12

M/s. Sareen Sports Industries, B-2/8, Rajori Garden, New Delhi.	Vs.	DCIT, Circle 2, Meerut.
PAN :AABCS9387E		
(Appellant)		(Respondent)

Assessee by	S/Shri K.Sampth & V. Rajkumar, Adv.
Department by	Shri T. Kipgen, CIT DR

Date of hearing	07.07.2022
Date of pronouncement	04.10.2022

ORDER**PER SAKTIJIT DEY, JUDICIAL MEMBER:**

Captioned appeal by the Revenue and cross-objection of the assessee arise out of order dated 28.03.2016 of learned Commissioner of Income-Tax (Appeals), Meerut for the assessment year 2011-12.

ITA No.3777/Del/2016:

2. Ground nos. 6 & 7 raised by the department being general in nature are dismissed.

3. In ground no.1, Revenue has challenged deletion of addition of Rs.4,20,326 representing disallowance of proportionate interest on interest free advances.

4. Briefly, the facts are, assessee is a resident partnership firm engaged in manufacturing of support goods. For the assessment year under dispute, assessee had filed its return of income on 30.09.2011 declaring total income of Rs.98,53,078.

5. In course of assessment proceedings, the assessing officer, after examining the details available on record, noticed that assessee had claimed deduction on account of payment of interest to bank, partners and others, whereas, assessee had given interest free advances/loan to

various persons amounting to Rs.35,02,720. Therefore, he called upon the assessee to explain why a part of his interest expenditure should not be disallowed as the borrowed funds were advanced for non-business purposes. Though, the assessee made his submission against the proposed disallowance, however, being dissatisfied with the submission of assessee, the assessing officer computed interest @ 12% on the alleged interest free advances of Rs.35,02,720 and disallowed an amount of Rs.4,20,326, being proportionate interest chargeable on the interest free advances. Assessee contested the aforesaid disallowance before learned Commissioner (Appeals).

6. Before the first appellate authority, assessee could furnish the details of the so called advances to different persons and explain that they are not in the nature of interest free advances/loans. The evidences furnished and submissions made were forwarded to the assessing officer for his comments.

7. After taking into consideration the submissions of the assessee and evidences on record and the observations of the assessing officer in the remand report, learned Commissioner (Appeals) held that the allegation of the assessing officer regarding interest free advances to

various persons are incorrect. After analyzing the factual position, learned Commissioner (Appeals) deleted the disallowance of Rs.4,20,326.

8. We have considered rival submissions and perused material on record.

9. The alleged interest free advances/loans on which the assessing officer has made the proportionate interest disallowances are as under:

S.No.	Name of party to whom advance/loan given	Amount
1	Advance to players	7,37,035
2.	JVS Sporting Advance tax	1,60,000
3.	Advance to Advocate	1,00,000
4.	Sunridges Sporting Tax	2,40,000
5.	Loan to Vinod Sareen	2,60,000
6.	Loan to Anisha Sareen	20,05,648
	Total	35,02,720

10. As could be seen from the factual aspect analyzed by learned Commissioner (Appeals), the amount of Rs.7,37,035 were given to players for endorsement of assessee's products/goods and there is advances given to an agent. The payment of Rs. 1,00,000 to an advocate is for attending to various legal matters concerning the assessee. Payments made to JVS Sporting and Sunridges Sporting are for the purpose of payment of taxes on their behalf as they are sister

concerns of the assessee and have running accounts. As regards, the advance to Shri Vinod Sareen, it is observed, he is an old and dependable employee of the assessee to whom advance is given at the time of need.

11. As regards, the alleged advance to Anisa Sareen, after examining the reconciliation statement filed by the assessee, learned Commissioner (Appeals) has given a factual finding that actually there was no such advance given to the concerned person. The aforesaid finding of fact recorded by learned Commissioner (Appeals) could not be controverted by the Revenue us. In view of the aforesaid, we uphold the decision of learned Commissioner (Appeals) on the issue. Ground raised is dismissed.

12. In Ground no. 2, the Revenue has challenged deletion of addition of Rs.14,52,33,651 made under Section 68 of the Act.

13. Briefly, the facts are, in course of assessment proceedings, while examining the audited financial statement of the assessee, the assessing officer found that a total credit balance of Rs.19,67,12,224 has been shown in the balance sheet. After calling for and examining the necessary details, the assessing officer observed that assessee

could furnish details and confirmation in respect of sundry creditors of Rs.1,19,48,831. Further, he observed, sundry creditors of Rs.3,95,30,742 related to the preceding year i.e. assessment year 2010-11. Thus, treating the balance sundry creditors of Rs.14,52,33,651 as unexplained cash credit under Section 68 of the Act, he added back to the income of the assessee. Assessee challenged the aforesaid addition before learned Commissioner (Appeals).

14. Before first appellate authority, assessee furnished various details to explain the genuineness of sundry creditors. The evidences furnished by the assessee were forwarded to the assessing officer for examination and necessary reports.

15. After considering the factual position as well as the submission made by the assessee and the report of the assessing officer, learned Commissioner (Appeals) was convinced that the sundry creditors appearing in the books of account of the assessee are genuine. Accordingly, he deleted the addition.

16. We have considered rival submissions and perused material on record.

17. Undisputedly, before the first appellate authority, assessee has furnished documentary evidences to explain the genuineness of the sundry creditors. The evidences furnished by the assessee were forwarded to the assessing officer for examination. On a perusal of the remand report dated 18.06.2015 furnished by the assessing officer, it is observed, after examining the evidences furnished by the assessee, the assessing officer has not found any inconsistency or suspicious in them. Rather, he has observed that on examination of documentary evidences, assessee's contention regarding the genuineness of the sundry creditors appears to be correct. However, merely because these evidences were not produced in course of assessment proceedings, the assessing officer has stated that such evidences should not be accepted and additions made should be confirmed. To say the least, the observations of the assessing officer are self-contradictory. On one hand, he accepts that assessee's contention regarding genuineness of sundry creditors appears to be correct, whereas, on the other hand, he terms assessee's claim to be afterthought. This, in our view, is unacceptable. When the assessing officer has not found anything adverse in the evidences furnished by the assessee and accepted

assessee's claim to be correct, he cannot again reject the claim of the assessee on flimsy ground. The assessing officer cannot blow hot and cold at the same time.

18. In view of the aforesaid, we uphold the decision of learned Commissioner (Appeals) by dismissing the ground raised.

19. In ground no. 3, Revenue has challenged deletion of addition of Rs.68,12,500 representing expenditure incurred towards distribution of free samples to players.

20. Briefly, the facts are, in course of assessment proceedings, the assessing officer noticed that assessee had claimed deduction of Rs.68,12,500 on account of free samples to players.

21. Before the assessing officer, the assessee explained that free samples were given to players of Meerut level, district level, zonal level, national and international level to push the business by promoting its brand name. Stating that in absence of supporting evidence assessee's claim is not acceptable, the assessing officer disallowed the deduction claimed. Assessee contested the disallowance before learned Commissioner (Appeals).

22. After considering the submission of the assessee in the context of facts and material on record, learned Commissioner (Appeals) held that considering the nature of expenditure, it may not be possible for the assessee to fully substantiate its claim through supporting evidence. Therefore, he restricted the disallowance to 10% of the amount claimed as deduction.

23. We have considered rival submissions and perused material on record.

24. Undisputedly, the assessee is a sports goods manufacturer to promote its products, the assessee has to supply free samples to both senior and junior level players, coaches etc. on personal contact basis. Therefore, it may not be always possible for the assessee to keep supporting evidence, considering the fact that at times, assessee is providing free samples to national/international level players of repute and considered as celebrity. Therefore, it may not be always possible to obtain receipt from such players qua the free samples. Therefore, assessee's claim that the expenditure cannot be fully substantiated through supporting evidence, to some extent, is acceptable. However, the possibility of inflation of expenditure to some extent cannot be

ruled out altogether. That being the case, to take care of such situation, a part of the expenditure being not supported by proper evidence has to be disallowed. In the peculiar facts of the present case, disallowance of 10% out of the expenditure claimed, in our view, is reasonable. Hence, no interference is called for. Accordingly, we uphold the decision of learned Commissioner (Appeals) we dismiss the ground raised.

25. In ground no. 4, Revenue has challenged deletion of addition of Rs.34,26,614 representing unexplained unsecured loan.

26. Briefly, the facts are, in course of assessment proceedings, the assessing officer noticed that the assessee has shown unsecured loan of Rs.24,23,903 in the balance sheet. On examining the account of assessee, the assessing officer noticed that credit balance of Rs.20,05,648 has been shown in case of Anisha Sareen, whereas, as per the audited balance sheet, the same appears as a negative balance. When called upon to explain, the difference, though, the assessee furnished its submission, however, it was not acceptable to the assessing officer. Accordingly, he added an amount of Rs.34,26,614 to the income of the assessee.

27. However, beng convinced with the explanation of the assessee, learned Commissioner (Appeals) deleted the addition.

28. We have considered rival submissions and perused material on record.

29. As could be seen, before the assessing officer the assessee explained that there was old unsecured loan of Rs.58,50,517 in the name of Anisha Sareen which continued and no further addition/repayment was made during the year. However, considering the fact that in the audited balance sheet outstanding balance of Rs.24,23,903 was shown, the assessing officer has added back an amount of Rs.34,26,614. In the remand report filed by the assessing officer in course of first appellate authority, it is observed, though, he could not find anything adverse in the details or reconciliation filed by the assessee, however, he simply observed that this is an afterthought of the assessee. The aforesaid facts clearly indicate that in course of first appellate proceeding, the assessee did furnish supporting evidence to reconcile the discrepancy pointed out by the assessing officer in the assessment order. It is further evident, the assessing officer, in course of remand has not found anything adverse in the

evidences furnished by the assessee. Thus, once the discrepancy pointed out by the assessing officer stands reconciled, no addition can be made on account of unsecured loan. Accordingly, we uphold the decision of the learned Commissioner (Appeals) by dismissing the ground raised.

30. In ground no. 5, Revenue has challenged deletion of addition of Rs.7,68,305 representing disallowance made under Section 40(a)(ia) of the Act. In course of assessment proceedings, the assessing officer noticed that the assessee has paid commission of Rs.24,69,362 to various parties without deducting tax at source. Accordingly, he disallowed the amount under Section 40(a)(ia) of the Act.

31. Assessee contested the aforesaid disallowance before learned Commissioner (Appeals).

32. Being convinced with the submission of the assessee, learned Commissioner (Appeals) deleted the disallowance.

33. We have considered rival submissions and perused material on record.

34. On perusal of remand report of the assessing officer furnished in course of first appellate proceedings, it is observed that the amount of Rs.24,69,362 comprise of the following:

i)	Commission to partners	7,68,305
ii)	Commission to agents	9,95,277
iii)	Commission to Bank	<u>7,05,779</u>
		<u>24,69,362</u>

35. As regards the commission to the agents, the assessing officer has accepted that tax was duly deducted at source and paid to the government account within the prescribed time. Therefore, this addition cannot survive.

36. As regards, commission to bank, the assessing officer has accepted that TDS provisions are not applicable to commission paid to bank. Thus, this addition was also rightly deleted. The only addition which, therefore, remains is commission to partners amounting to Rs.3,68,305. As rightly observed by learned Commissioner (Appeals), commission paid to partners is not covered under Section 194H of the Act as there is no employer and employee or principal agent relationship between the partners and the firm. Thus, we do not find

any reason to interfere with the decision of learned Commissioner (Appeals) on the issue. Ground raised is dismissed.

37. In the result, the appeal is dismissed.

C.O. No. 290/Del/2016:

38. The only effective ground raised by the assessee relates to disallowance of 10% out of the free samples given to players. While deciding corresponding issue raised in ground no. 3 of Revenue's appeal in ITA No.3777/Del/2016 in the earlier part of the order, we have upheld the addition of learned Commissioner (Appeals) on the issue. Thus, this ground of the assessee has become infructuous.

39. The other grounds raised by the assessee are merely in support of the order passed by learned Commissioner (Appeals).

40. In view of the aforesaid, cross-objection is dismissed.

41. To sum up, both the appeal and cross-objection are dismissed.

Order pronounced in the open court on 4th October, 2022.

Sd/-

**(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER**

Sd/-

**(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: 4th October, 2022.

Mohan

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi