

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"F" Bench, Mumbai**

**Before Shri Jason P. Boaz, Accountant Member  
and Shri Sandeep Gosain, Judicial Member**

**ITA No. 1500/Mum/2014**  
(Assessment Year: 2009-10)

Vardhman Sonal Joint Venture 111, Pagrav, 57, S.V. Road Goregaon (W), Mumbai 400062 PAN - AAAAV2912R	Vs.	Deputy Commissioner of Income Tax - 24(3) Mumbai
---	-----	--

**Appellant**

**Respondent**

Appellant by:	Shri Pathik Shah
Respondent by:	Shri A.K. Dhondial

Date of Hearing:	01.08.2016
Date of Pronouncement:	23.09.2016

**ORDER**

**Per Jason P. Boaz, A.M.**

This appeal by the assessee is directed against the order of the CIT(A)-34, Mumbai dated 12.12.2013 for A.Y. 2009-10.

2. The facts of the case, briefly, are as under: -

2.1 The assessee, engaged in the business of building construction and development, filed its return of income for A.Y. 2009-10 on 29.09.2009 declaring income of ₹20,20,593/-. The return of income was processed under section 143(1) of the Income Tax Act, 1961 (in short 'the Act') and the case was subsequently taken up for scrutiny. The assessment was completed under section 143(3) of the Act vide order dated 26.12.2011 wherein the income of the assessee was determined at ₹27,12,260/-, in view of, inter alia, disallowance of ₹19,21,287/- out of interest expenditure claimed @2%, under section 40A(2) r.w.s. 37 of the Act. The proportionate disallowance on loan from Siddhi Sonal Services in Corporate Avenue project being ₹6,91,663/- and the balance ₹12,29,624/- pertaining to S.T. Shah Project reduced the WIP of this project accordingly.

2.2 Aggrieved by the order of assessment dated 26.12.2011 for A.Y. 2009-10, the assessee preferred an appeal before the CIT(A)-34, Mumbai. The only ground raised by the assessee before the learned CIT(A) was that the Assessing Officer (AO) had erred in disallowing additional interest of 2% of ₹19,21,287/-. According to the assessee's submissions, the disallowance of 2% interest was excessive since in fact the assessee had availed the loan from Labdhi Sonal Services @18% interest in the period relevant to A.Y. 2007-08, but in subsequent assessment years the interest rate was reduced to 15% in the period under consideration. It was submitted that the loan from Labdhi Sonal Services was for long term whereas the loan from Siddhi Sonal Services was for short term and therefore being taken for different purposes and the additional interest paid being only 1%, the disallowance under section 40A(2) of the Act was not called for. Alternatively, it was submitted by the assessee, before the learned CIT(A) that interest paid to Labdhi Sonal Services should be disallowed at 1% and not 2% as done by the AO. The learned CIT(A) allowed this alternate claim put forth by the assessee and thereby restricted the disallowance from ₹19,21,287/- to ₹9,60,644/-. Consequently, the assessee was allowed relief of ₹9,60,643/-.

3. Aggrieved by the order of the CIT(A)-34, Mumbai dated 12.12.2013, the assessee has preferred this appeal raising the following grounds: -

- “1. Whether honourable Commissioner of Income Tax (Appeals) is correct in upholding the view of Assessing Officer that rate of interest paid by the assessee is higher and liable to disallowance u/s 40(A)(2) without assigning any reason, why the rate of interest paid by the assessee is higher.
2. Whether honourable Commissioner of Income Tax (Appeals) has erred in disallowing interest u/s 40(a)(2) without distinguishing the Mumbai High Court judgement in CIT V. Indo Sandi Services P. Ltd. and other decisions of honourable Tribunals and honourable High Courts during assessment proceedings.
3. The Appellant craves the leave to add, amend, alter and/or delete any of the above grounds of appeal on or before the time of hearing.”

3.1 The learned A.R. for the assessee was heard in support of the grounds raised and reiterated the submissions put forth before the authorities below,

pleading that the disallowance under section 40A(2) be deleted. In support of this contention the learned A.R. placed, inter alia, reliance on the decision of ITAT Amrtisar Bench in the case of Subhash Chander & Co. vs. Income Tax Officer in ITA NO. 568 (ASR)/2008 dated 13.01.2009.

3.2 Per contra, the learned D.R. for Revenue supported and placed reliance on the impugned order of the learned CIT(A). According to the learned D.R., the learned CIT(A) while upholding the disallowance of excessive interest paid to the related party, Labdhi Sonal Services under section 40A(2) of the Act, allowed the assessee's relief on the alternate ground put forth by it that the interest paid to Labdhi Sonal Services was 15% and not 16% as adopted by the AO as against 14% interest paid to Siddhi Sonal Construction and therefore restricted the disallowance to 1% of interest amounting to ₹9,60,644/- as against ₹19,21,287/- (viz. @2% of interest) disallowed by the AO. The learned D.R. further submitted that the learned CIT(A) had, in fact, considered the judicial pronouncements, cited by the assessee while rendering finding and was of the opinion that they would not come to the rescue of the assessee.

3.3.1 We have heard the rival contentions of both the parties and perused and carefully considered the material on record, including the judicial pronouncements cited. The only issue for adjudication before us in this appeal is whether or not the disallowance of interest paid to associated concern under section 40A(2) of the Act was called for. The facts of the matter as emanate from the record is that in the period under consideration, the AO observed from the details of interest expenditure incurred, that the assessee had paid interest of ₹1,53,70,298/- to Labdhi Sonal Services @15% and ₹11,57,272/- to Siddhi Sonal Construction @14% for utilisation in its construction projects. Both these parties admittedly come within the purview of provisions of section 40A(2) of the Act. The AO after seeking the assessee's explanation in the matter proceeded to disallow under section 40A(2) of the Act, an amount of ₹19,21,287/- being 2% of the 16% interest paid by the assessee to Labdhi Sonal Services, which was in excess the 14% interest paid to Siddhi Sonal Construction.

3.3.2 According to the assessee, it had availed loan from Labdhi Sonal Services @18% in the earlier period relevant to A.Y. 2007-08 which was later reduced to 15.5% in A.Y. 2008-09 project construction business. Before the learned CIT(A) the assessee factually established that the interest paid to Labdhi Sonal Services was 15% and not 16% and was allowed relief whereby the interest disallowance under section 40A(2) was restricted to 1% i.e. ₹9,60,644/- as against ₹19,21,281/- originally disallowed.

3.3.3 It is not the case of the Revenue that interest in excess of 15% was not paid in the earlier years; and which was accepted by the Department at 18% in A.Y. 2007-08. In our view, the disallowance under section 40A(2) of the Act can be made when the expenditure is excessive or unreasonable having regard to the FMV of the goods, services or facilities for which the payment is made or the legitimate needs of the business. The authorities below have not worked out as to how the payment of interest to one of the two related parties was excessive without making comparison of FMV of the same with payments to unrelated parties. The onus was upon Revenue to establish that the interest paid was excessive or unreasonable having regard to the legitimate business needs of the assessee. In the case on hand, it is seen that the concerned interest expenditure of ₹1,65,27,575/- was paid to two related parties, i.e. ₹1,52,70,298/- to Labdhi Sonal Services @15% and ₹11,57,277/- to Siddhi Sonal Construction @14% for its business purposes of construction activities. In our view, in the facts and circumstances of the case, Revenue has not discharged the burden to prove that the interest expenditure paid to Labdhi Sonal Services was excessive or unreasonable having regard the legitimate business requirements of the assessee. The AO/CIT(A) have not specified as to under which of the requirements of section 40A(2) of the Act, the case on hand falls. Revenue cannot place itself in the armchair of the businessman/assessee and assume the role of deciding how much expenditure is reasonable in the facts and circumstances of the case as the businessman is also compelled by commercial expediency. In the peculiar factual and legal matrix of the case, we are of the opinion that even the part disallowance of interest of ₹9,60,644/- sustained by the learned

CIT(A) in the impugned order is to be deleted. We hold and direct the AO accordingly. Consequently, grounds raised by the assessee are allowed.

4. In the result, the assessee's appeal for A.Y. 2009-10 is allowed.

Order pronounced in the open court on 23<sup>rd</sup> September, 2016.

Sd/-  
**(Sandeep Gosain)**  
**Judicial Member**

Sd/-  
**(Jason P. Boaz)**  
**Accountant Member**

Mumbai, Dated: 23<sup>rd</sup> September, 2016

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -34, Mumbai*
4. *The CIT - 24, Mumbai*
5. *The DR, "F" Bench, ITAT, Mumbai*

*By Order*

//True Copy//

*Assistant Registrar*  
*ITAT, Mumbai Benches, Mumbai*

n.p.