

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

[Coram: Pramod Kumar AM]

I.T.A. No.2906/Ahd/2015
Assessment Year: 2012-13

Anurag Goel,**Appellant**
Delta Global Inc.,
903, Saffron Tower,
Opp. Central Mall,
Panchvati, Ambavadi,
Ahmedabad – 380 015.
[PAN : ACDPG 4081 G]

Vs.

Income Tax Officer,**Respondent**
Ward - 5(3)(1), Ahmedabad.

Appearances by:

None for the appellant
Keyur Patel for the respondent

Date of concluding the hearing: 17.08.2017
Date of pronouncing the order: 29.08.2017

O R D E R

1. By way of this appeal, the assessee appellant has challenged correctness of the order dated 31.08.2015, passed by the learned CIT(A), Ahmedabad, in the matter of assessment under section 143(3) of the Income Tax Act, 1961 (~~the~~ Act hereinafter) for the assessment year 2012-13.

2. Grievances raised by the assessee appellant are as follows :-

“1. On the facts and in the circumstance of the case, the Ld. CIT(A) has erred in upholding the disallowance of Rs.6,67,990/- out of total interest expenses on unsecured loans of Rs.17,81,293/- treating it excessive or unreasonable.

2. The appellant prays that the disallowance of Rs.6,67,990/- made out of interest expenses be deleted.

3. None appeared on behalf of the assessee but I have heard the learned Departmental Representative, perused the material on record and duly considered facts of the case in the light of applicable legal position.

4. To adjudicate on this grievance, only a few material facts need to be taken note of. The assessee is an individual, carrying on the business in a proprietorship firm. He had taken unsecured loans in the proprietorship firm from his relatives and paid interest @ 24% totalling to Rs.17,81,293/-. A deduction of the above expenditure was claimed by the assessee in the return of income. The Assessing Officer has restricted the rate of interest payment to 15% and disallowed an amount of Rs.6,67,990/- on account of excessive interest payment under section 40A(2)(b) of the Act. Aggrieved, assessee carried the matter in appeal before the learned CIT(A) but without any success. Assessee is not satisfied and is in further appeal before me.

5. A bare perusal of section 40A(2)(a) of the Act would contemplate that if an assessee incurs any expenditure in respect of which payment has been or is to be made to any person referred to in clause (b) of this sub-section, and the Assessing Officer is of opinion that such expenditure is excessive or unreasonable having regard to the fair market value of the goods, services or facilities availed from the persons to whom such payment was made, then he can disallow the excess payment. In other words, if since some service or goods availed at a legitimate rate from the open market then difference between the rate at which facilities would be availed vis-a-vis actually availed should be disallowed to the assessee. According to the Assessing Officer the loan which have been availed by the assessee from the persons falling in clause (b) of section 40A(2) would be availed at the rate of 15%, hence the interest paid over and

above the rate of 15% was considered as excessive. On due consideration of this reason, I am of the view that the Assessing Officer has failed to bring any evidence on record which can show that the interest paid at 25% by the assessee is not in consonance with the market rate. These are unsecured loans for which assessee was not required to pledge anything or give any security. He was not required to fulfil other formalities which is to be fulfilled if loans were availed from the Banks. These aspects have not been looked into by the Assessing Officer while considering market rate of interest payment on the loans at 15%. Thus, I am of the view that interest payment @ 24% on unsecured loans is not excessive. I thus allow this appeal and delete the disallowance.

6. In the result, the appeal is allowed. Pronounced in the open court today on the 29th day of August 2017.

Sd/-

Pramod Kumar

(Accountant Member)

Dated: Ahmedabad, the 29th day of August, 2017.

PBN/*

<i>Copies to:</i>	(1) <i>The appellant</i>	(2) <i>The respondent</i>
	(3) <i>CIT</i>	(4) <i>CIT(A)</i>
	(5) <i>DR</i>	(6) <i>Guard File</i>

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*