

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E" MUMBAI**

**BEFORE SHRI RAVISH SOOD (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 3268/MUM/2013  
Assessment Year: 2001-02**

Shri SK GK VK Rathi HUF  
C/O. G.P. Mehta & Co. CAs.,  
807, Tulsiani Chambers,  
212, Nariman Point,  
Mumbai-400021.

The Income Tax Officer,  
Ward 18(1)(4),  
Income Tax Office,  
Piramal Chambers, 1<sup>st</sup>  
floor, Lal Bag,  
Mumbai-400013.

**PAN No. AAPHS6062R**  
**Appellant**

**Respondent**

Assessee by : Mr. G.P. Mehta, AR  
Revenue by : Mr. V. Justin, DR

Date of Hearing : 19/02/2018  
Date of pronouncement : 11/04/2018

**ORDER**

**PER N.K. PRADHAN, AM**

This is an appeal filed by the assessee. The relevant assessment year is 2001-02. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-29, Mumbai [in short CIT(A)] and arises out of the assessment completed u/s 143 (3) of the Income Tax Act 1961, (the 'Act').

2. The grounds raised by the assessee/appellant in this appeal read as under:

1. The order passed by the Ld. lower authorities are bad in law and bad in facts.

2. The Ld. lower authorities have grossly erred in making/upholding an addition of Rs.13,27,650/- by way of disallowance of interest expenses. Reasons assigned for the impugned addition are wrong and contrary to the evidence on record.
3. The Ld. lower authorities have grossly erred in making an addition of Rs.13,27,650/- to the returned income by holding that interest bearing funds were used for giving interest free advances. Impugned disallowance is arbitrary and unrelated to evidence on record.
4. The Ld. lower authorities have grossly erred in making/upholding an addition of Rs.1,31,270/- by holding same to prior period expenditure, even though, the appellant never claimed the amount in question as prior period expenditure. The adverse conclusion drawn is contrary to the evidence on record.
5. Having regard to the facts of the case, provisions of law and judicial propositions, the impugned addition are wholly uncalled for and deserves to be deleted.

3. Briefly stated, the facts of the case are that the assessee is proprietor of M/s K.M. Investment Co. which is engaged in the business of finance involving lending of money and earning interest thereon. During the course of assessment proceedings, the Assessing Officer (AO) noted that in the case of the assessee, there are interest-free advances of Rs.80,72,905/- as against which the availability of interest-free borrowed loans was only Rs.38,01,823/-. Similarly, in the case of the proprietary concern M/s K.M. Investment Co., as against interest-free advances of Rs.4,12,14,299/-, the available interest-free loans were deposited to the tune of Rs.3,30,74,845/-. Therefore, the AO asked the assessee to explain why the deficit amount (interest-free advances *minus* interest-free loans taken) should not be disallowed. The assessee

failed to file before the AO the bank statement showing the nexus of funds. Therefore, the AO calculated the disallowance of interest @ 12% on the total deficit amount of Rs.42,71,082/- in the case of assessee and of Rs.81,39,454/- in the case of M/s K.M. Investment Co. The AO calculated the interest amount disallowable at Rs.5,12,521/- in the case of the assessee and of Rs.9,76,734/- in the case of M/s K.M. Investment Co. totalling to Rs.14,89,255/-. However, since the total interest debited in both the entities was only of Rs.13,27,650/-, the AO restricted the disallowance of interest to Rs.13,27,650/- only.

Also the AO made an addition of Rs.1,31,270/- on the reason that prior period expenditure cannot be adjusted in the previous year relevant to A.Y. 2001-02.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) agreed with the reasons given by the AO and dismissed the appeal filed by the assessee. However, we find from page number 1 of the order passed by the Ld. CIT(A) that none appeared on behalf of the appellant.

5. Before us, the Ld. counsel of the assessee submits that the matter may be restored to the file of the Ld. CIT(A) to consider the matter afresh after giving a reasonable opportunity of being heard to the assessee.

On the other hand, the Ld. DR supports the order passed by the Ld. CIT(A).

6. We have heard the rival submissions and perused the relevant materials on record. We find that the Ld. CIT(A) has categorically mentioned at column number 9 at page 1 of his appellate order dated 21.02.2013 that no one appeared before him on behalf of the appellant. We are of the considered view that in the fitness of things, a proper hearing should be given by the Ld. CIT(A) to the appellant to ascertain the taxability or otherwise of the interest of Rs.13,27,650/- and also the contentions of the assessee that it had never claimed Rs.1,31,270/- as prior period expenditure.

In view of the above, we set aside the order of the Ld. CIT(A) and restore the matter to him to decide the issue afresh after giving reasonable opportunity of being heard to the assessee. We direct the assessee to appear before the Ld. CIT(A) and file the relevant documents/evidence before him.

7. In the result, the appeal is allowed for statistical purposes.

**Order pronounced in the open Court on 11/04/2018.**

Sd/-  
(RAVISH SOOD)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 11/04/2018

*Rahul Sharma, Sr. P.S.*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**