

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'C' BENCH, CHENNAI
श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं ए. मोहन अलंकामणी, लेखा सदस्य के समक्ष
BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.2284/CHNY/2017
(निर्धारण वर्ष / Assessment Year: 2013-14)

Shri Kapilkumar Maheswari, 18, Crescent Park Road, T.Nagar, Chennai – 600 017.	Vs	The ACIT, Non Corporate Circle 1(1), Chennai – 34.
PAN: AFPPK4521G		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से /Appellant by	:	Shri M. Narayanan, ITP
प्रत्यर्थी की ओर से /Respondent by	:	Shri R. Clement Ramesh Kumar, CIT

सुनवाई की तारीख/Date of hearing	:	07.08.2018
घोषणा की तारीख/Date of Pronouncement	:	09.10.2018

आदेश / ORDER

Per A. Mohan Alankamony, AM:-

This appeal by the assessee is directed against the order passed by the Ld. Commissioner of Income Tax (Appeals)-2, Chennai dated 28.07.2017 in ITA New No.220/CIT(A)-2/2015-16 for the assessment year 2013-14 passed U/s.250(6) r.w.s. 143(3) of the Act.

2. The assessee has raised the following grounds in his appeal:-

1. The order of the learned Commissioner of Income Tax (Appeals) is bad in law and against the facts and circumstances of the case.

2. The learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of Rs. 4,09,500 without properly appreciating the facts and circumstances of the case

3. The learned Commissioner of Income Tax (Appeals) erred in dismissing the appeal without understanding that the disallowance of interest is under section 36(1)(III) whereas she has applied the requirements under section 68 relating to cash credit

4. The learned Commissioner failed to note that the disallowance relates to a debit in the P&L a/c and not a credit which appears in the Balance Sheet

5. The learned Commissioner of Income Tax failed to note that all the creditors are old creditors of accounts running for the past several years and that the interest is paid through banking channels.

6. The learned Commissioner of Income Tax failed to note that the assessee cannot be held responsible for the actions and statements made to him by the creditors when the payment of interest is genuine and it relates to business for the past several years.

7. For these and other grounds that may be taken at the time of hearing the penalty levied may be cancelled and justice rendered

3. The brief facts of the case are that the assessee is an individual, engaged in the business of trading in iron and steel in the name of his Proprietary concern 'M/s.Kapil Agencies'. The case was selected for scrutiny under CASS and notice U/s.143(2) of the Act was issued on 03.09.2014. Finally assessment order was passed U/s.143(3) of the Act on 15.02.2016 wherein the Ld.AO made addition of Rs.4,09,500/- towards disallowance of interest expenditure U/s.36(1)(iii) of the Act.

4. During the course of scrutiny assessment U/s.143(3) of the Act, it was observed by the Ld.AO that the assessee had incurred expenditure towards interest amounting to Rs.4,09,500/- paid to the following entities who are loan creditors:-

<i>Sl. No.</i>	<i>Name</i>	<i>PAN</i>	<i>Interest Payment</i>	<i>Income Returned</i>	<i>Return filed on</i>
1	<i>Asha Malpani</i>	<i>AALPM6797K</i>	<i>45000</i>	<i>195670</i>	<i>19.01.16</i>
2	<i>Jyothi Mehta</i>	<i>AAGPM1460L</i>	<i>9000</i>		
3	<i>Vallabh Malpani HIF</i>	<i>AAAHV2523B</i>	<i>49500</i>	<i>152680</i>	<i>11.01.16</i>
4	<i>Vallabh Vishal Malpani HUF</i>	<i>AAEHV3972N</i>	<i>49500</i>	<i>174220</i>	<i>19.01.16</i>
5	<i>Mangal Shree Corporation</i>	<i>AAAHV2904A</i>	<i>49500</i>	<i>173450</i>	<i>19.01.16</i>
6	<i>Narbadha Devi Bisani</i>	<i>AAHPB1257D</i>	<i>72000</i>		
7	<i>Vallabh Malpani</i>	<i>AAKPM6389G</i>	<i>45000</i>	<i>182520</i>	<i>11.01.16</i>
8	<i>Priya Malpani</i>	<i>AOVPM5354C</i>	<i>45000</i>	<i>129680</i>	<i>19.01.16</i>
9	<i>Vallabh Amritlal Malpani HUF</i>	<i>AQBPM4402B</i>	<i>45000</i>		
<i>TOTAL</i>			<i>409500</i>		

To ascertain the genuineness of the creditors notice U/s.133(6) of the Act was issued to all the creditors. However the notices were returned citing various reasons stating “error in address”, “such a person not available”, etc. On query the Ld.AR explained that the creditors may have changed their address and further submitted the return of income filed by few of the creditors and letters from the other creditors that their records related to filing of the return of income were lost. Further on verifying the details from the jurisdictional officers it was found that certain creditors had not filed their return of income for the year in which the assessee had claimed expenses towards interest. It was

further found that in some cases returns were filed just a week before the date of hearing in the case of the assessee i.e., on 11th & 19th January 2016. Therefore the Ld.AO opined that the genuineness of the creditors are doubtful and accordingly disallowed interest expenditure of Rs.4,09,500/- in the hands of the assessee. On appeal the Ld.CIT(A) confirmed the order of the Ld.AO agreeing with his view.

5. Before us the Ld.AR submitted that the assessee had furnished the details of PAN number and the address of the creditors and thereby discharged his onus. It was further submitted that the Ld.AO did not examine the sundry creditors before making addition in the hand of the assessee by disallowing the interest expense. It was therefore pleaded that the addition made by the Ld.AO may be deleted. The Ld.DR on the other hand relied on the orders of the Ld.Revenue Authorities.

6. We have heard the rival submissions and carefully perused the materials on record. From the facts of the case, it is apparent that the assessee had furnished the PAN number of the Sundry Creditors, address and even return of income filed by them in few cases. Thus predominantly the assessee had discharged his onus. Further it is not disputed that the assessee had not made the payment towards

interest. Considering the nature and size of the business of the assessee and the details furnished by him, we are of the considered view that the assessee had discharged his onus. Therefore in the interest of justice, we hereby direct the Ld.AO to delete the addition made by him for Rs.4,09,500/- by disallowing the expense incurred towards interest.

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

Order pronounced on the 9th October, 2018 at Chennai.

Sd/-

(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

Sd/-

(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 9th October, 2018

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- | | | |
|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |