

IN THE INCOME-TAX APPELLATE TRIBUNAL "SMC" BENCH MUMBAI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

AND SHRI PAWAN SINGH JUDICIAL MEMBER

ITA No. 726/Mum/2018 (Assessment Year 2013-14)

Stock Traders Pvt. Ltd. 63, Sonawala CHS, Bombay Samachar Marg, Fort, Mumbai-400001. <b>PAN: AAFCS0567G</b>	Vs.	ITO - 2(3)(2) Aayakar Bhavan, M.K. Road, Mumbai-40020.
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Appellant

Respondent

Appellant by : Shri Sanjeev Lalan (AR)

Respondent by : Shri S.K. Bepari (DR)

Date of Hearing : 03.10.2018

Date of Pronouncement : 10.10.2018

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by assessee under Section 253 of Income-tax Act is directed against the order of Id. CIT(A)-6, Mumbai dated 20.11.2017, which in turn arises from the assessment order passed on 04.03.2016 under section 143(3) of the Act for Assessment Year 2013-14. The assessee has raised the following grounds of appeal:

**A) Disallowance of interest expenses amounting to Rs. 4,23,788/-**

1. The learned CIT(A) erred in law and facts in confirming the disallowance of interest expenses amounting to Rs. 4,23,788/- in respect of loans borrowed from genuine parties during the Financial Year 2012-13.
2. The learned CIT(A) failed to appreciate the objective of the Appellant and its nature of business of lending and borrowing.

3. The learned CIT(A) failed to appreciate that the rates of interest differ according to the duration of loans, time at which the funds are lent/borrowed, and also its terms and conditions.

4. The learned CIT(A) failed to appreciate the fact that the Appellant has lent the unsecured loan to PRS Permacel Pvt. Ltd at the rate of 14.5% p.a. in the financial year 1999-2000 and thus, the rate of interest at which income is earned is not comparable to the rate of interest expense incurred in the financial year 2012- 13.

5. Your Appellant prays that disallowance of interest may please be deleted.

**B) Re-classifying 'leave and license fees' earned amounting to Rs. 5,70,000/- under the head 'Income from Other Sources' instead of 'Profit and Gains from business and Profession'**

1. The learned CIT(A) erred in law and facts in confirming the re-classification of leave and license fees under the head 'Income from Other Sources' instead of 'Profit and Gains from Business and Profession'.

2. The learned CIT(A) erred in not appreciating the fact that your Appellant had offered the income from 'leave and license agreement' as business income which was accepted by the erstwhile Assessing Officer.

3. Your Appellant prays that income from leave and license agreement may please be consider as Profit and Gain form Business and Profession.

**C) Disallowance of foreign travel expenses of wife of the Director amounting to Rs. 6,77,907/-**

1. The learned CIT(A) erred in law and facts in confirming the disallowance of foreign travel expenses of wife of the Director merely by following Ld. CIT Predecessors decision.

2. The learned CIT(A) erred in not appreciating the fact that the travel expenses incurred and paid by the assessee on travel of wife of a Director are wholly and exclusively for the business of Your Appellant and therefore deductible under the provisions of Income Tax Act, 1961.

3. The learned CIT(A) failed to consider judicial pronouncements where in it was held that expenses incurred in connection with the travels of wives of managers were allowed as business expenditures.

4. Your appellant prays that disallowance of foreign travel expenses of wife of the Director may please be deleted.

**D) General**

1. The above Grounds of Appeal are without prejudice to one another and the appellant craves leave to add, alter, amend, delete or modify any of the above Grounds of Appeal.
2. Brief facts of the case are that the assessee is a Non Banking Finance Company (NBFC) engaged in the business of financing and investment. The assessee filed its return of income for Assessment Year 2013-14 on 28.09.2013 declaring Nil income. After setting off of brought forward losses of Assessment Year 2005-06. The assessment was completed under section 143(3) on 04.03.2016. The Assessing Officer while passing the assessment order besides the other addition and disallowance disallowed interest expenses of Rs. 4,23,788/-, on his view that the assessee has borrowed loan at higher rate of interest and advanced to the sister concern at lower rate, treated the income of leave and licence under the heads“ Income from Other Sources” in place of “Business Income”. Disallowed Foreign Travel Expenses of Rs. 6,77,907/- incurred in respect of wife of the Director. On appeal before the Id. CIT(A), all the additions/disallowances were confirmed. Therefore, further aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before us.
3. We have heard the Id. Authorized Representative (AR) of the assessee and Id. Departmental Representative (DR) for the Revenue and perused the material available on record. The Id. AR of the assessee submits that assessee is in Non Banking Finance Company registered with Reserve Bank of India. The assessee borrowed the capital wholly and exclusively

for the purpose of business and for commercial expediency during the year, the assessee earned the interest income of Rs. 1.16 crore for finance. The assessee incurred interest expenses at Rs. 83.02 lakhs on account of borrowed unsecured loans. The assessee given unsecured loan to its sister concern PRS Permacel Private Ltd. @ 15.5% in the Financial Year 1999-2000. The interest rate which is earned is not comparable to the rate of interest expenses incurred in Financial Year 2012-13. The Assessing Officer disallowed the interest expenses of Rs. 4,23,78/-, out of which Rs. 2,06,404/- for the reasons that assessee paid interest to M/s Illingworth Commerce Private Ltd. @ 15% to charge interest to its group company namely PRS Permacel Private Ltd. @ 14.5%. It was submitted that borrowing from M/s Illingworth Commerce Private Ltd. were temporary advances, as sum of Rs. 50 lakh was for four month and another Rs. 50 lakh was for 14 month only. The fund borrowed from M/s Illingworth Commerce Private Ltd. in the nature of stock gap arrangement. The cost of short term borrowings is always high compared to long term duration. In alternative submission, the Id. AR of the assessee submits that assessee's interest free fund is more than the funds borrowed by assessee. The assessee was having interest free fund of Rs. 7.7 crore and interest bearing fund of Rs. 6 crore thus totalling Rs. 13,72,15,000/-. The assessee as on 01.04.2012 lent fund of Rs. 14,00,96,200/- only. Thus, the proportion interest bearing borrowings to the interest free borrowings are

43.73%. The interest bearing advances are only 43.73%. Therefore, out of interest expenses of Rs. 4,23,788/- only 43.73% should be considered for disallowances which comes to Rs. 1,85,344/- only. In support of his submission, the Id. AR of the assessee relied upon the decision of Punjab & Haryana High Court in CIT vs. Pankaj Munjal Family Trust [2010] 326 ITR 286 (P&H).

4. On the other hand, the Id. DR for the Revenue supported the order of authorities below. The Id. DR for the Revenue further submits that the assessee has borrowing the fund @ 18% and at the same time he has advanced the loan to its sister concern at 14.5%, therefore, the lower authorities was justified in making proportionate disallowance.
5. We have considered the rival submission of the parties and have gone through the orders of authorities below. The Assessing Officer disallowed the interest expenses on his observation that there is no business rational in taking loan at higher interest and advancing the same at the lower interest rate. The transactions are clearly made to pass the benefit to the sister concern and therefore, disallowed the interest expenses of Rs. 4,23,788/-. The Id. CIT(A) confirmed the action of Assessing Officer and not accept the alternative submission of proportionate disallowance. On his observation that the facts are clearly hit by the provisions of section 40A(2)(b). Before us, the assessee has vehemently submitted that the proportions of interest bearing borrowing to the interest free funds are

43.73%. Thus, out of advance to PRS Permacel Private Ltd., the interest bearing advances can only be 43.73% and out of interest expenses of Rs. 4,23,788/-, only 43.73% should be considered for disallowance. The submission of Id. AR of the assessee is found to be convincing to us. Therefore, we accept the contention of Id. AR of the assessee and restored this issue to the file of Assessing Officer to examine the proportionate interest bearing borrowings to the interest free funds as on 01.04.2012 and pass the order in accordance with law. Needless to order that before passing the order the assessing officer shall grant opportunity to the assessee. We order accordingly. In the result, ground no.1 of the appeal is allowed for statistical purpose.

6. Ground No.2 relates to treating the leave and license fees under the head “Income from Other Sources” in place of “Business Income” as offered by the assessee. The Id. AR of the assessee submits that for earlier Assessment Year, the similar income was treated as “Income from Business”, therefore, the revenue should follow the principle of consistency and should treat the income from leave and license as ‘Business Income’ instead of ‘Income from Other Sources’. In support of his submission, the Id. AR of the assessee relied upon the decision of Hon’ble Bombay High Court in case of PCIT vs. Quest Investment Advisors (P.) Ltd. [2019] 96 taxmann.com 157 (Bom) and the decision of Tribunal in Shantilal M. Jain vs. ACIT [2011] taxmann.com 143 (Mum).

7. On the other hand, the Id. DR for the Revenue supported the order of authorities below.
8. We have considered the rival submission and gone through the orders of authorities below. The Assessing Officer while framing the assessment order treated the income from leave and license fees as 'Income from Other Sources'. The Assessing Officer treated the income as Income from Other Sources on taking view that rent earned from subletting is not the business of assessee and merely because revenue did not question or accepted the particular stand of assessee in earlier years, it does not prevent the Assessing Officer from applying the correct provision of law. The Id. CIT(A) confirmed the action of Assessing Officer holding that the property in question is taken on leave and license and again sublet on leave and license basis. There is no element of service provided and it is not the case of assessee that property is in such income from which would qualified to the nature of business. The business of assessee is not of taking property of leave and license and to sublet the same.
9. We have noted that the Id. AR of the assessee vehemently relied upon the decision of jurisdictional High Court in PCIT vs. Quest Investment (supra) wherein Hon'ble jurisdictional High Court held in absence of any change of circumstances the rule of consistency must be followed. Further, the Co-ordinate Bench of Tribunal in Shantilal M. Jain (supra) had taken the similar view. We have noted that the factual position is not in much

dispute. The lower authority has not disputed that in earlier years, the same income was treated as Business Income. Therefore, considering the decision of Hon'ble jurisdictional High Court in case of PCIT vs. Quest Investment (supra), we direct the Assessing Officer to verify the fact, if similar income was accepted as Business Income than the income from leave and license be treated as Business Income. Hence, Ground no.2 of the appeal is allowed.

10. Ground No.3 relates to disallowance on account of travel expenses of wife of the Director of assessee company. The Id. AR of the assessee submits that in Assessment Year 2011-12 similar ground of appeal was not pressed. However, in earlier Assessment Year, the similar disallowance was confirmed by Tribunal and the assessee has filed further appeal before the Hon'ble High Court of Bombay.

11. On the other hand, the Id. DR for the Revenue supported the order of authorities below. The Id. DR further submits that this similar ground of appeal is disallowed against the assessee in appeal for Assessment Years 1995-96, 1996-97 and 1998-99 which was followed in Assessment Year 1998-99.

12. We have considered the rival submission of the parties and have gone through the orders of authorities below. We have noted that similar ground of appeal was dismissed by the Co-ordinate Bench of this Tribunal in appeal for Assessment Year 1995-96 was dismissed in ITA No. 2802,

2803/Mum/2003 vide order dated 05.04.2016. Further, following the decision of Tribunal, the appeal for Assessment Year 1998-99 was also dismissed vide ITA No. 4493/Mum/2013 dated 11.07.2018. Considering the decision of Tribunal and following the principle of consistency, Ground No. 3 of the appeal is dismissed. No contrary fact or law is brought to our notice to take any contrary view.

13. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 10/10/2018.

**Sd/-**  
**SHAMIM YAHYA**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

Mumbai, Date:10.10.2018

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**Copy of the Order forwarded to :**

1. Assessee
3. The concerned CIT(A)
5. DR "SMC" Bench, ITAT, Mumbai
6. Guard File

2. Respondent
4. The concerned CIT

**BY ORDER,**  
**Dy./Asst. Registrar**  
**ITAT, Mumbai**