

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 1269/DEL/2016 (A.Y 2012-13)

Harjeet Singh Kandhari C/o. R. S. Ahuja & Co. CAs C-353, Defence Colony New Delhi ABKPS7462F (APPELLANT)	Vs	ITO Ward-53(4) New Delhi (RESPONDENT)
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Appellant by	Sh. Sahil Jain, CA
Respondent by	Sh. Surender Pal, Sr. DR

Date of Hearing	13.02.2019
Date of Pronouncement	15.02.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 01/01/2016 passed by CIT(A)-18, New Delhi for Assessment Year 2012-13.

2. The grounds of appeal are as under:-

“1. That on the facts & circumstances of the case the Learned ITO & the CIT(A) erred in:

1) Making an addition of Rs. 9,51,227/- the interest charged to Profit & Loss account on account of notional interest on loans given to sister concern.”

3. The assessee is an individual and derives income from business and profession, income from other sources and income from house property. The assessee filed its e-return u/s 139(1) on 26/9/2012 declaring income of Rs.9,14,242/- which was processed u/s 143(1) of the Income Tax Act, 1961.

The case was selected for scrutiny and notice u/s 143(2) was issued which was duly served to the assessee. The Assessing Officer observed that the assessee has given interest free loans to his sister concern amounting to Rs.17,69,652/- and Rs.61,64,244/- to M/s Aura Infotech Pvt. Ltd. and M/s R. R Designs Pvt. Ltd. respectively. The Assessing Officer observed that no interest was charged on these loans by the assessee. Thus, the Assessing Officer charged notional interest at 12% per annum on these loans and added back to the income of the assessee.

4. Being aggrieved by the Assessing Officer, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that similar issue has been decided by the Tribunal in assessee's own case for Assessment Year 2011-12 being ITA No. 1268/Del/2016 and hence the issue is covered in favour of the assessee.

6. The Ld. DR relied upon the order of the CIT (A).

7. We have heard both the parties and perused the material available on record. The Tribunal held in Assessment Year 2011-12 reads as under:-

"8.2 With regard to ground no. 2 relating to disallowance amounting to Rs. 8,86,386/- the interest charged to Profit and Loss account on account of notional interest on loans given to sister concern is concerned, I find that the AO has made addition of Rs. 8,86,386/- for notional interest on loans given amounting to Rs. 17,69,652/- and Rs. 61,24,244/- to M/s Arura Infotech P Ltd. and M/s RR Design P Ltd. and Ld. CIT(A) has confirmed the addition in dispute. However, I find that the assessee has actually given interest free loan to its sister concerns out of his own contribution in the proprietorship concern and unsecured loan received from his personal circle and not given from interest bearing secured loan facility availed from banks. I further find

that the assessee provided interest free unsecured loan to his sister concern out of his own fund and nothing has been charged in the form of interest and none of any other interest has been taken from the companies from which interest free loan has been- given. The AO nowhere in his order provided that the assessee has taken the interest on the loan or any other benefit from the companies in any other manner. I find that as has been held in the case of CIT vs. Kajal Exports (Gujarat) ITR 362 / 2014, that the availability of interest free funds (that is own funds shall be taken into consideration, for the purpose of disallowance of interest) has to be taken care of. I also find that it is well settled law that notional interest cannot be charged as held by Hon'ble Gauhati High Court in the case of Highways Constructions Co. Pvt. Ltd. Vs. Commissioner of Income Tax 199 ITR 702 and Keshrichand Jaisukhlal CJT 122 Taxman 307 (Gau). In view of the above discussions and respectfully following the precedents, as aforesaid the addition in dispute is deleted and accordingly, the ground no. 2 raised by the assessee stands allowed."

In the present year, we find from the ledger accounts of M/s R.R Designs and M/s Aura Info Tech Pvt. Ltd. that the said loans are continuing and the interest free loan was given to its sister concern out of assessee own capital in the proprietorship concern. Therefore, the decision of the Tribunal is applicable in the present year as well.

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

Order pronounced in the Open Court on 15th FEBRUARY, 2019.

Sd/-

(R. K. PANDA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 15/02/2019
R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	14.02.2019
Date on which the typed draft is placed before the dictating Member	14.02.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	15.02.2019
Date on which the final order is uploaded on the website of ITAT	15.02.2019
Date on which the file goes to the Bench Clerk	15.02.2019
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	