

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.845/Del/2018  
Assessment Year: 2014-15

Suresh Kumar Garg,  
2629A, Naya Bazar,  
New Delhi.

Vs. ITO,  
Ward-47(1),  
New Delhi.

PAN: AAFPG4752Q

(Appellant)

(Respondent)

Assessee by	:	Shri K. Sampath & Shri V. Raj Kumar, Advocates
Revenue by	:	Shri S.L. Anuragi, Sr. DR
Date of Hearing	:	18.02.2019
Date of Pronouncement	:	20.02.2019

ORDER

This appeal by the assessee is directed against the order dated 03.11.2017 of the CIT(A)-16, New Delhi, relating to Assessment Year 2014-15.

2. The assessee in its only ground has challenged the order of the CIT(A) in confirming the action of the Assessing Officer in adding a sum of Rs.2,95,541/- as notional income.

3. Facts of the case, in brief, are that the assessee is an individual and is engaged in the trading of food grains under the name and style of the proprietorship concern M/s Jhandu Mal Ram Mehar. He filed his return of income on 25.09.2014 declaring the

total income at Rs.5,63,730/-. The Assessing Officer, during the course of assessment proceedings observed from the balance sheet for the year ending on 31<sup>st</sup> March, 2013 and 31<sup>st</sup> March, 2014 that a loan of Rs.21,11,009/- in the name of Smt. Saroj Garg, wife of the assessee was outstanding as on 31.03.2014. The same was shown under the head sundry debtors. The Assessing Officer asked the assessee to explain as to why the assessee has not charged any interest on the same loan of Rs.21,11,009/- given to Smt. Saroj Garg whereas the assessee is paying interest on secured as well as on unsecured loans. The assessee in his response submitted his reply which has been reproduced by the Assessing Officer in the body of the assessment order and which reads as under:-

“4.2 In response, the assessee vide letter dated 16.08.2016 has submitted as under:

“ during the year under assessment the assessee firm has availed a cash credit limit from State Bank of Mysore, Naya Bazar, Delhi against the mortgage of immovable property of Smt. Saroj Garg, wife of the assessee and to whom interest free advance has been made. It is not out of place to mention that for not charging interest from the person to whom advance has been made is not more important than the person (Smt. Saroj Garg) who accommodates the assessee in arranging the cash credit limit from bank after mortgaged her property. Further, after satisfying the documents placed before the bank authority, the cash credit limit has been sanctioned to the assessee by the bank upto 2 crore at a nominal rate of interest. It is further submitted that there is no bar against advancing of loan interest free or at a low rate of interest which may be very many considerations. Thus, this issue is settled by the decision of the Bombay High Court in the case of “Reliance Utilities & Power Ltd. reported in 313 ITR 340 (Bombay) where in it was held that where an assessee has his own funds as well as borrowed funds, a presumption can be made that the advance for nonbusiness have been made out of own funds and that the borrowed funds have not been issued for this purposes.” Merely for the reasons that interest was not charged on the lending, the interest paid for borrowings cannot be disallowed. Further, on going through the submission and facts of the case, the question of charging the interest @ 14% on the amount of loan & advance made to Smt. Saroj Garg does not arise.”

4. However, the Assessing Officer was not satisfied with the explanation given by the assessee and calculated the interest on the same @ 14% and made addition of Rs.2,95,541/- to the total income of the assessee.

4.1 In appeal, the Id.CIT(A) upheld the action of the Assessing Officer by observing as under:-

“6. Finding:- I have carefully examined the finding of the AO, submission of the appellant and the available case laws.

The fact of the case that the appellant has brought forward capital in the capital account of Rs.28,15,381/-and outstanding secured loan of Rs.22,70,036/-and unsecured loan of Rs.92,59,960/. The appellant has made interest payment of Rs.23,32,958.12 and received interest of Rs. 1306460.22.

The AO in the assessment order made out a case by analysing the capital account, loan secured and unsecured and advances given. The AO doubted the sufficiency of fund as no documentary evidence submitted. In appeal also the appellant has not submitted cash flow statement with respect to the liquidity available with it at the time of extending interest free loan. From the submission and the argument of the appellant it is not clear when interest free loan of Rs.21,11,009/- has been advanced and out of which fund as the appellant does not possess substantial capital in his capital account. Appellant's argument that he has received interest free unsecured loan from two parties amounting to Rs.36 lakhs. It can not be ascertained from the submission of the appellant that when these persons have advanced loan and whether this very interest free loan is advanced to his wife. Regarding fund in the capital account, usually, remain invested in the assets form. The mere availability of fund in itself does not enable the appellant to extent interest free loan. Therefore, the appellant has failed to establish that sufficient fund was available to advance interest free loan to Mrs. Saroj Garg.

Regarding the commercial expediency of advancing loan to his wife to avail the cash credit limit from bank, in the present case we do not know how the fund utilised by her. Therefore, the appellant has failed the test of use of fund for business purpose. Appellant's argument that there is no bar on advancing interest free loans but the appellant must prove before the AO that whether this fund is from own capital or borrowed interest free loan. On this account the appellant grossly failed. In the case of Ahhishek Industries Ltd vs CIT (2006) 156 Taxman 257 (P&H) (2006) 286 ITR 1 (P&H) (2006) CTR 304 (P&H) where Hon. P&H High Court held that once it is borne out from record that assessee had borrowed certain funds on which liability to pay tax is being incurred and on other hand, certain amounts had been advanced to sister concerns or others without carrying

any interest and without any business purposes, interest to extent that advance had been made without carrying any interest is to be disallowed u/s 36(i)(iii). The Hon. Delhi High Court in the case of Punjab Stainless Steel Inds. Vs CIT(2011) 196 Taxman 404 (Delhi (2010) 324 ITR 396 (Delhi) . Hon'ble Court held that in this case there was absolutely no finding recorded by tribunal that interest free advances were made by assessee to sister concern for its business purposes. It was also noticed that advances were extended out of borrowed funds and not out of any credit balance available with assessee firm it was held that in impugned order passed by authorities below was to be upheld. Hon'ble Punjab & Haryana High Court Thukral Regal Shoes vs CIT(2016) taxmann.com 192 (P&H) (2016) 241 Taxman 361 (P&H) (2017) 391 ITR 119 (P&H) (2016) 290 CTR 596 (P&H) where it is held that where assessee firm failed to establish that properties purchased by its partners were put to use by firm, deduction on interest expenditure on borrowed fund could not be allowed in view of proviso to section 36(i)(iii).

In the light of discussion above, I do not find any reason to interfere with the finding of the AO. The AO has given categorical finding in the assessment order after analysing the capital sufficiency of the appellant. Addition of Rs. 295541/- on account of interest free loan, is confirmed. Therefore, this ground of appeal is dismissed.

In the result, the appeal of the appellant is Dismissed.”

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

6. The ld. counsel for the assessee, at the outset, submitted that the assessee has obtained cash credit loan of Rs.2 crore from State Bank of Mysore for which the property of wife of the assessee has been mortgaged. The money so obtained as cash credit from the bank has been utilized for the business of the assessee and has not been diverted for any other purpose. Further, the own capital of the assessee at Rs.28.18 lakhs is more than the loan of Rs.21.11 lakhs given to the wife of the assessee. Relying on the following decisions, he submitted that no notional interest can be added in the hands of the assessee:-

(i) Smt. Satish Bala Malhotra vs. CIT 391 ITR 256 (P&H); and

(ii) Highways Construction Company Pvt. Ltd. vs. CIT, 199 ITR 702.

7. He accordingly submitted that the addition of Rs.2,95,541/- on account of notional interest made by the Assessing Officer and upheld by the CIT(A) should be deleted.

8. The ld. DR, on the other hand, heavily relied on the order of the CIT(A). He submitted that the ld.CIT(A) has given valid reasons while upholding the disallowance made by the Assessing Officer. There is nothing on record to show that the assessee has given interest free loan to his wife for his business purpose. The assessee has not proved that the advance was given not out of borrowed funds, but, was from the funds available to the assessee. Therefore, the order of the CIT(A) be upheld and the ground raised by the assessee should be dismissed.

9. I have heard the rival arguments made by both the sides and perused the material available on record. The Assessing Officer, in the instant case, has made addition of Rs.2,95,541/- being notional interest on interest free loan advanced to the wife of the assessee which has been upheld by the CIT(A). It is the submission of the ld. counsel for the assessee that the assessee has obtained cash credit of Rs.2 crores from the bank for which the property of his wife has been mortgaged and, further, the own capital of the assessee at Rs.28.18 lakhs is much more than the interest free advance of Rs.21.11 lakhs given to the wife of the assessee. The Hon'ble Guwahati High Court in the case of Highways Construction Company Pvt. Ltd. (supra) has held

that there is no provision in the Income-tax Act empowering the Income-tax authorities to include in the income interest which was not due or not collected for which the addition of amounts as notional interest was held to be not justified. In any case, since the property of wife of the assessee was mortgaged to the bank on which the assessee has raised substantial loan and since the own fund of the assessee is much more than the interest free loan advanced to the wife of the assessee, therefore, under the facts and circumstances of the case, I am of the considered opinion that no notional interest should be added to the total income of the assessee. I, therefore, set aside the order of the CIT(A) and direct the Assessing Officer to delete the addition. The ground raised by the assessee is accordingly allowed.

10. In the result, the appeal filed by the assessee is allowed.

The decision was pronounced in the open court on 20.02.2019.

Sd/-  
(R.K. PANDA)  
ACCOUNTANT MEMFBER

Dated:20<sup>th</sup> February, 2019

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Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi