

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. / ITA No.1201/PUN/2018

निर्धारण वर्ष / Assessment Year : 2012-13

Shri Ashok Akheraj Khivasara, Vs. ITO, Ward-6(2),
148, Bhavani Peth, Pune
Pune – 411 002
PAN : ABPPK8981Q

(Appellant)

(Respondent)

Appellant by Shri Kishor Phadke
Respondent by Shri Rajesh Gawli

Date of hearing 20-03-2019

Date of pronouncement 20-03-2019

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the order passed by the CIT(A)-13, Pune on 07-05-2018 in relation to the assessment year 2012-13.

2. The only issue raised is against the confirmation of disallowance of interest of Rs.8,67,205/-.

3. The facts apropos this issue are that the assessee paid interest to various related persons @24% which was found by the Assessing Officer (AO) to be high.

Applying the provisions of section 40A(2), the AO restricted the allowability of interest at 18%, thereby making an addition for the remaining 6% which came at Rs.8,67,205/-. The Id. CIT(A) did not allow the assessee's stand, against which the appeal has been preferred before the Tribunal.

4. I have heard both the sides and gone through the relevant material on record. It is noticed that the Id. CIT(A) did not allow the assessee's stand by noticing in the penultimate para of his order that "*there was no evidence on the part of the appellant to show that he had earned interest at 24%. It remains a mere averment on his part. The appellant has not even filed copies of his balance sheet, P&L a/c. and computation to show that he has indeed earned interest let alone the rate of interest.*"

Page 33 onwards of the paper book is a copy of the letter dated 03-08-2017 addressed by the assessee to the CIT(A). On page 34, the assessee has categorically mentioned that he recovered interest @24% per annum and also paid interest @24%. There is some reference to

the ledger extracts of some persons, namely, Avior Techno Fab Pvt. Ltd., Dharmshi Signature and Gandhi Bafna, from whom the assessee received interest @24%. It is thus apparent from the above letter written by the assessee to the Id. CIT(A) that he gave instances in which interest @24% was earned, which position has not been properly recorded in the impugned order. The Id. AR further claimed that the assessee was consistently paying interest @24% in the preceding years which has been accepted as such. In view of the fact that these two relevant facts, namely, receipt of interest @24% during the year from certain persons and payment of interest @24% in preceding years, have not been properly taken into consideration by the authorities before deciding the issue, I am of the considered opinion that the ends of justice would meet adequately if the impugned order on this score is set-aside and the matter is remitted to the file of AO. I order accordingly and direct him to decide this issue afresh in the light of above observations.

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

Order pronounced in the Open Court on 20th March, 2019.

Sd/-
(R.S.SYAL)
उपाध्यक्ष/ VICE PRESIDENT

पुणे Pune; दिनांक Dated : 20th March, 2019
सतीश

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) /
The CIT (Appeals)-7, Pune
4. The Pr. CIT-6, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "SMC" /
DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	20-03-2019	Sr.PS
2.	Draft placed before author	20-03-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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