

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT  
AND  
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1185/PUN/2016  
निर्धारण वर्ष / Assessment Year : 2011-12

The Income Tax Officer,  
Ward – 2(1), Jalgaon

.....अपीलार्थी / Appellant

**बनाम / V/s.**

M/s. Jalgaon Investment Pvt. Ltd.,  
Jain Pipe Nagar, Old Dhule Road,  
Jalgaon – 425001

PAN : AABCJ4765D

.....प्रत्यर्थी / Respondent

Assessee by : Smt. Deepa Khare  
Revenue by : Ms. Shabana Parveen

सुनवाई की तारीख / Date of Hearing : 27-02-2019

घोषणा की तारीख / Date of Pronouncement : 25-04-2019

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM :**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-2, Nashik dated 17-03-2016 for the assessment year 2011-12. The solitary issue raised by the Revenue in appeal is against deleting the addition of Rs.1,43,82,332/- on account of

disallowance of interest u/s. 40A(2)(b) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. The brief facts of the case as emanating from the records are : The assessee is engaged in purchase and sale of onions. The assessee filed its return of income for the impugned assessment year on 30-09-2011 declaring total income of Rs.1,15,790/-. The case of assessee was selected for scrutiny, consequently, statutory notice u/s. 143(2) of the Act was issued to the assessee on 24-09-2012. In scrutiny assessment proceedings, the Assessing Officer observed that the assessee has taken loan from its Directors/Shareholders and has paid interest @ 14.46%. The Assessing Officer held that no business expediency is established for obtaining loan from the Directors / Shareholders and the interest paid by the assessee company to the Directors is excessive. The Assessing Officer restricted the payment of interest @ 12% and disallowed the remaining interest payment aggregating to Rs.1,43,82,332/- u/s. 40A(2)(b) of the Act.

Aggrieved against the assessment order dated 26-03-2014, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) allowed the appeal of assessee on the ground that neither the assessee had debited interest paid to Directors/Shareholders to Profit and Loss Account nor any deduction has been claimed by the assessee on payment of interest on unsecured loans from the Directors / Shareholders. Against the aforesaid findings of Commissioner of Income Tax (Appeals), the Revenue is in appeal before the Tribunal.

3. Smt. Deepa Khare appearing on behalf of the assessee-respondent vehemently defended the impugned order. The ld. Counsel for the assessee submitted that since the assessee has not claimed the payment of interest as expenditure there is no question of disallowing the same.

4. Ms. Shabana Parveen representing the Department vehemently defended the assessment order. The ld. DR submitted that the assessee has failed to show the business expediency for taking loan from the Directors/Shareholders. The ld. DR further contended that the assessee has paid excessive interest on loan taken from the Directors / Shareholders of the assessee company.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The solitary issue in appeal by the Revenue is deleting of disallowance of interest allegedly paid by the assessee company to the Directors/Shareholders on unsecured loans. The Commissioner of Income Tax (Appeals) has deleted the addition by observing as under :

*“6. .... It is seen that the appellant had neither debited the interest paid to Profit & loss account nor claimed any deduction on account of interest paid on unsecured loan in the Return of Income filed and the same fact is also admitted by the A.O. in his assessment order. Rather appellant has capitalized the interest paid to the cost of investment in shares of Jain irrigation systems ltd. as per consistent practice followed. Since no deduction on account of interest payment is at all claimed by the appellant question of any disallowance of interest u/s. 40A(2)(a) could not arise.”*

6. The ld. DR has failed to controvert the findings of the Commissioner of Income Tax (Appeals). No material has been placed on record by the Revenue to show that the interest expenditure has been claimed by the

assessee in the Profit and Loss Account. Once, the expenditure has not been claimed by the assessee there is no question of disallowing the same. We do not find any infirmity in the impugned order. Accordingly, the same is upheld and the appeal of Revenue is dismissed being devoid of any merit.

7. In the result, the appeal of Revenue is dismissed.

Order pronounced on Thursday, the 25<sup>th</sup> day of April, 2019.

Sd/-  
(R.S. Syal)  
VICE PRESIDENT

Sd/-  
(Vikas Awasthy)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 25<sup>th</sup> April, 2019

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-2, Nashik
4. The Pr. Commissioner of Income Tax-2, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune