

THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai  
Before Shri Shamim Yahya (AM)

I.T.A. No. 4426/Mum/2018 (Assessment Year 2012-13)

M/s. Samnaji Sampatraj (new name SSS Gold) 102, Sharda Chambers Keshavji Naik Road Mumbai-400 009.  PAN : AARFS8297G (Appellant)	Vs.	ITO Ward-17(3)(3) Aayakar Bhavan M.K. Road Mumbai-400 020.  (Respondent)
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Assessee by	Shri Hans P. Jain
Department by	Shri Chaitanya Anjaria
Date of Hearing	11.7.2019
Date of Pronouncement	23.9.2019

ORDER

This appeal by the assessee is directed against order of learned CIT appeals dated 19.4.2018 and pertains to assessment year 2012-13.

2. The grounds of appeal read as under :-

1. Learned C.I.T.(A) erred in not discussing why sum of Rs. 3,75,566/- is not assessable u/s 44AD as returned and as assessed in earlier years. Appellant prays to take whole income as Income u/s 44AD as returned.
2. Learned C.I.T.(A) erred in not accepting the fact that Total Income is disclosed u/s 44AD as in the past. Appellant prays to treat Total Income as Business Income and treat Total Income as Income u/s 44AD as returned.
3. Learned C.I.T.(A) erred in confirming assessing sum of Rs. 3,75,566/- as Income u/s 57 as Income from Other Sources as against Total Income disclosed u/s 44AD. Appellant prays that sum of Rs. 3,75,566/- be taken as Business Income and assessed u/s 44AD.
4. Learned C.I.T.(A) erred in confirming applicability of provisions of Section 57, without discussion which was objected by appellant. Appellant prays that provisions of Section 57 are not applicable.

5. Without prejudice appellant prays that Interest paid on loan taken be allowed as expenditure against Interest Income u/s 57 as there is nexus between Interest earned and Interest paid.
  6. Appellant prays to add, amend, delete or substitute above grounds of appeal on or before date of hearing.
3. Brief facts of the case and the action of the assessing officer in this case are as under :-

“ The assessee is a partnership firm engaged in the business of job work of Gold and Silver jewellery. For the preceding year, the assessee has effected sales turnover of Rs.20,81,034/- with Gross Profit of Rs.7,52,673/- and net profit declared at Rs.19,296/- only.

On perusal of trading, profit and loss account for the year ended on 31/03/2012, it is seen that the assessee has debited the net interest payment of Rs.5,36,753/-. During the financial year 2011-12 relevant to AY 2012-13, the assessee has advanced loans and advances of Rs.20,09,731/- on which interest was received to the tune of Rs.3,75,566/-. Further, assessee has paid interest of Rs.9,12,319/- on loans and the assessee has set off the interest payment against the interest earned of Rs.3,75,566/- and balance of Rs.5,36,753/-(Rs.912,319 - 375,566) has debited to the profit and loss account.

During the course of assessment proceedings, the assessee was asked to explain as to why the interest receipts should not be treated as Income from other sources and expenditure should not be allowed as per the provisions of section 57 of the I.T.Act. In reply, the assessee has stated that interest on stock in trade is taken @12% (i.e. interest paid), interest bearing funds are either utilized as stock in trade or for loans given to earn interest. It is further submitted that interest earned on advances are out of interest bearing loans only and therefore nexus between loans given out of loan taken are proved in these transactions. The contention of the assessee is not acceptable in view of the following reasons :-

- i) The nature of assessee's business is job work/processing of Gold & Silver jewellery and not of money lending business.
- ii) Money is not lend for temporary period.
- iii) Advance period is more than one year or two years and hence it is not temporary parking of funds.
- iv) Interest paid is not incurred for earning the income from other sources or interest income.
- v) Expenses which is attributable to earn such income of interest is only allowable as per section 57 of the I.T.Act.

In view of the above facts, the interest expenditure of Rs. 9,12,319/- is treated as business expenditure which is adjusted/included in the profit u/s.44AD. The said business expenditure is not attributable to earning the income from other sources i.e. interest income of Rs. 375,566/-. Therefore, interest income of Rs.375,566/- is taxed under the head Income from Other Sources.”

4. Upon assessee's appeal learned CIT(appeals) summarised the issue and his reasoning are as under :-

“4.1 Two issues are:

- i. Is the interest income, the business income of appellant?
- ii. Is netting of interest income allowable on facts (supra)?

Further, appellant has relied upon:

- a. Taparia Tools CA 6366-68/2003 (SC).
- b. Kudu Industries ITA 388/2014 dated 31.07.2015 (P&H).

Both of the cited judgments are on Section 36(l)(iii). But this issue would arise only if interest income is held as business income.

4.2 The first issue to be noted is that interest received on loans and advances was Rs.3,75,566/-. Further, interest paid on loans was Rs.9,12,319/-. The appellant set-off both interests and offered net Rs. 5,36,753/- for tax. The key point is in view of income being returned u/s.44AD, the movement of Rs.9.12 lacs as business expenditure (which it undoubtedly is) would not make any difference to income (unlike in any other regular business income case which would lead to reduction of taxable income). 44AD computation is turnover based and has nothing to do with debits of expenses. At the same time, appellant had advanced monies also on which interest income had been earned. This income would normally go to Section 56. But appellant set it off against interest expenses, thus reducing the debit to business turnover - but because of 44AD, the debit was of no consequence. This colorable device resulted in no tax being paid on interest income.”

5. Thereafter learned CIT(appeals) referred to a catena of case laws without bringing on record as to how these case laws were relevant to the facts of the case. Accordingly learned CIT appeals upheld the order of assessing officer.

6. Against the above order assessee is in appeal before the ITAT. I have heard both the counsel and perused the records. I find that in this case it is the plea of the assessee that assessee has used interest-bearing funds to give advances. In this view of the matter the interest expenditure and interest

income are directly correlated. The reason mentioned by the assessing officer in rejecting the contention is that assessee is dealing in gold and silver ornaments and money-lending is not its business. I find that this is glossing over the substance of the matter. It has not been disputed that assessee has used the interest-bearing funds to give the advances. When this fact is taken into account the incidence of the interest income has to be adjusted from the interest expenditure. In my considered opinion there is no infirmity in the accounting treatment given by the assessee. The honourable Supreme Court's decision in the case of Taparia tools (supra) duly fortifies this position. In my considered opinion learned commission of income tax appeals has totally erred in coming to the conclusion that the above case law is not applicable as the same is with respect to allowance under section 36(1). I find that the precise claim of the assessee is on the same lines that the interest expenditure and the interest income were related and should have gone into the accounting as business of the assessee. The various other case were referred by the learned CIT appeals without mentioning as to how their applicable on the facts of the present case are not germane.

7. In this view of the matter in my considered opinion on the entire conspectus of the matter and the precedent cited above the order of the authorities below is liable to be set aside. Accordingly I set aside the orders of authorities below and delete the addition.

8. In the result this appeal filed by the assessee stands allowed.

Order has been pronounced in the Court on 23.9.2019.

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 23/9/2019

Copy of the Order forwarded to :

1. The Appellant

*M/s. Samnaji Sampatraj  
(new name SSS Gold)*

2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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