

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

BEFORE SHRI ANIL CHATURVEDI, AM AND  
SHRI S.S. VISWANETHRA RAVI, JM

आयकर अपील सं / ITA No.439/PUN/2017

निर्धारण वर्ष / Assessment year : 2013-14

M/s. B U Bhandari Tempo,  
A/3, Abhimanshree,  
Society, Pasahan,  
Pune – 411 008.

..... अपीलार्थी /  
Appellant.

PAN : AABFB2262N.

बनाम v/s

The Asst.Commissioner of Income Tax,  
Circle – 2, Pune.

..... प्रत्यर्थी /  
Respondent

Assessee by : Shri V.L. Jain.

Revenue by : Shri S.P. Walimbe.

सुनवाई की तारीख / Date of Hearing : 18.10.2019	घोषणा की तारीख / Date of Pronouncement: 01.11.2019
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आदेश / ORDER

**PER ANIL CHATURVEDI, AM :**

1. This appeal filed by the assessee is emanating out of the order of Commissioner of Income Tax (A) – 2, Pune dated 08.12.2016 for the assessment year 2013-14.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a partnership firm who filed its return of income for A.Y. 2013-14 on 31.07.2013 declaring total income of Rs.15,40,07,274/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 29.02.2016 and the total income was determined at Rs.16,10,20,678/-.

Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A) who vide order dated 08.12.2016 (in appeal No.PN/CIT(A)-2/ACIT Cir-2/PN/597/2015-16) dismissed the appeal of the assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal and has raised the following grounds :

*“1. The learned CIT(A) has erred on facts and in law in and on facts in not granting a proper opportunity of being heard, thereby violating the principles of natural justice.*

*2. The learned CIT(A) erred in law and on facts in confirming an addition of Rs.70,13,404/- on account of disallowance of various expenses debited to the Profit and Loss account.”*

3. Before us, at the outset, Ld.A.R. submitted that he does not wish to press ground No.1. In view of the aforesaid submission of Ld.A.R., **ground No.1 is dismissed as not pressed.** Ground No.2 is with respect to confirming the addition of Rs.70,13,404/- by Ld.CIT(A).

4. During the course of assessment proceedings and on perusing the Profit and Loss account, AO noticed that assessee has claimed to be carrying on the business of granting loans and earning interests thereon. AO has noted that assessee has failed to establish that the object of the assessee as per in the Partnership Deed permitted it to do the activity of money lending. He also noted that as per Sec.5 of the Bombay Money Lending Act, 1947, no person can carry such an activity of money lending without obtaining a licence to that effect from the Government. He noted that assessee had not obtained any such licence for money lending activity from the appropriate authorities. He therefore concluded that the assessee's claim of carrying on business of money lending cannot be accepted and therefore the interests earned by the assessee has to be assessed as 'income from other sources' as

against the claim of the assessee of being business income. AO thereafter re-casted the Profit and Loss account and on the basis of his re-casting, he concluded that assessee has claimed loss of Rs.51,03,973/- which is not allowable. He also noted that assessee had shown interest earned of Rs.56,79,786/- on capital balance of partners against which assessee had claimed interest expenditure of Rs.37,70,355/- being interest paid on capital balances to the partners having credit balance. AO noticed that the entire interest of Rs.56,79,786/- is charged on the debit balance of one of the partners namely Shailesh Bhandari. He after noting the interest expenditure which is allowed as deduction, the interest earned on debit balance, the net income from interest earned from the partners worked out to Rs.19,09,431/- which according to him was assessable as income from business as against the loss shown by the assessee of Rs.51,03,973/- and thus according to him the net addition under the head 'income from business' would be of Rs.70,13,404/-. He thus proceeded to make addition of Rs.70,13,404/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who upheld the order of AO by observing as under :

*“3.2 I have gone through the facts of the case as mentioned in the assessment order as well as arguments taken on behalf of the appellant. It is noticed that the Assessing Officer in the assessment order has made surgical analysis of profit and loss account and came to the conclusion that various expenses claimed are not related to the earning of income as no business was being carried out by the appellant. It has mainly earned income from capital gain and - income from house property which have been shown and taxed under the respective heads only. It is also noticed that interest expenses paid on bank 'loans are not related to the earning of the interest income. The Assessing Officer has given a clear finding that the conditions of provision of see. 36(1)(iii) are not being fulfilled in the case of the appellant. In the written submission filed the appellant has also admitted that the appellant is not carrying any core business activity as such. However it has failed to justify as to how various expenses including interest expenses can be claimed as business expenditure particularly when no business is being carried on by the appellant.*

3.2.1 For claiming any expenditure u/s 37(1) of the IT Act, the onus is on the assessee to prove that the same is wholly & exclusively related to the business of the assessee. This proposition has been laid down by the **Hon'ble Supreme Court in the case of CIT vs. Calcutta Agency Ltd. (19 ITR 191)**.

3.2.2 **In the case of L. H. Sugar Factory & Oil Mills (P.) Ltd. Vs. CIT (125 ITR 293) (SC)**, it has been held that when an assessee claims a deduction the onus is on him to bring all material facts on record to substantiate his claim.

3.3.3 In the written submission filed, Ld. Counsel of the appellant has not been able to justify the claim of various expenses particularly keeping in view of the fact that no business is being carried on by the appellant. The reliance placed by him on various decisions cannot come to the rescue of the appellant in absence of any facts supporting him.

3.3.4 On the face of aforesaid discussion on the facts of the case and decisions cited, I hold that the Assessing Officer was perfectly justified in disallowing various expenses claimed as business expenditure to the tune of Rs. 70,13,404/- as the appellant thoroughly failed to discharge its onus as required u/s 37(1) of the I T Act for claiming deduction. The order of the Assessing Officer is - accordingly upheld and the grounds raised are accordingly dismissed.”

Aggrieved by the order of Ld.CIT(A), assessee is now before us.

5. Before us, Ld.A.R. reiterated the submissions made before the lower authorities and further submitted that the observation made by the AO of money lending business by assessee being not as per the objective of the Partnership Deed is factually incorrect as the Partnership Deed very clearly holds that financing is also the activity which the firm can undertake. In support of the aforesaid contention, he pointed to the copy of Partnership Deed executed on 31.12.2003 which is placed at Pages from 27 to 30 of the Paper Book. He further submitted that the observation of AO and Ld.CIT(A) that no business activity has been carried out by assessee is also incorrect in view of the fact that the AO himself in the computation made by him has assessed the income from business and in support of which he pointed to Page 6 of the assessment order. He further pointing to the Balance-Sheet of the

firm which is placed at Pages 3 and 5 of the Paper Book submitted that only one of the partners Mr. Shailesh Bhandari's closing balance capital on 31.03.2003 was having debit balance but when the aggregate balance of all the partners is considered, the closing credit balance of the partners capital account as on 31.03.2003 is Rs.6,11,38,264/-. He pointing to the aforesaid fact from the copy of the Balance-Sheet which is placed at Pages 3 to 5 of the Paper Book. He therefore submitted that AO has wrongly proceeded on the basis of the incorrect assumptions that assessee is not carrying on the business and therefore the expenditure is not allowable. He therefore submitted that the addition made by the AO be deleted. Ld. D.R. on the other hand supported the order of AO and Ld.CIT(A).

6. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to disallowance of expenses of Rs.70,13,404/- mainly by holding that assessee has not carried out any business activity during the year. The copy of the Partnership Deed which is placed by the assessee in the Paper Book reveals that one of the activity of the firm is financing as spelt out in the Partnership Deed. We further find that the conclusion of the AO of assessee not having carried out any business activity is also contrary to the facts in view of the fact that in computation of income in the assessment order. AO himself has computed the income of Rs.19,09,431/- as "business income". Further, the aggregate capital balance of the partners also reveals that the partners capital account in aggregate is in credit and only the capital of one of the partners is in debit. Considering the totality of the aforesaid facts, we are of the view that AO was not justified in disallowing the expenses by noting that no

business activity has been carried out by the assessee. We therefore the AO direct to delete the addition made by him. **Thus, the grounds of the assessee are allowed.**

7. **In the result, the appeal of the assessee is partly allowed.**

Order pronounced on 1<sup>st</sup> day of November, 2019.

**Sd/-**  
**(S.S. VISWANETHRA RAVI)**  
न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**  
**(ANIL CHATURVEDI)**  
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 1<sup>st</sup> November, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-2, Pune.
4. Pr. CIT-2, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" / DR, ITAT, "A" Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER**

// True Copy //

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