

आयकर अपीलिय अधिकरण, पुणे न्यायपीठ “एक-सदस्य मामला” पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE**

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / **ITA No.473/PUN/2019**
निर्धारण वर्ष / **Assessment Year : 2015-16**

M/s. Five Elements,
501, Swojas House, Lane No.14,
Prabhat Road, Erandwane,
Pune-411004.

PAN : AACFF2456M

.... अपीलार्थी/Appellant

Vs.

ITO, Ward-3(1),
Pune.

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Sanket Joshi
प्रत्यर्थी की ओर से / Respondent by : Shri S. P. Walimbe

सुनवाई की तारीख / Date of Hearing : 16.12.2019	घोषणा की तारीख / Date of Pronouncement: 16.12.2019
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This appeal is filed by the assessee against the order of CIT(A)-3, Pune dated 12.10.2018 for the Assessment Year 2015-16.

Preliminary Issue - Condonation of Delay

2. Before me, at the outset, ld. Counsel for the assessee submitted that the appeal could not be filed in time and the said appeal is now filed with the **delay of 59 days**. In this regard, ld. Counsel for the assessee filed an affidavit stating the reasons for non-filing the appeal of the assessee in time. For the sake of completeness, the relevant para of the said affidavit is extracted hereunder :-

“I wish to state that I am looking after the accounting work of M/s. Five Elements, Pune. I hereby state that I visit the above firm on a weekly basis and complete the accounting entries and related work. I wish to state that the envelope containing the appellate order passed by CIT(A) in case of M/s. Five Elements for A.Y.2015 - 16 was handed over to me by the employee of M/s. Five Elements around the first week of December, 2018. I hereby state that I kept the said envelope with me with the intention to forward the same to the C.A. of the above firm, Mr. Nimeet Gujarathi and his staff, Mr. Gopal Dongare and discuss about further action to be taken in respect thereof. I wish to state that around the second week of December, I travelled out of station and the envelope was placed in the drawer at my home. I hereby state that thereafter, I forgot to forward the appellate order to the C.A. for taking further action. I wish to state that the said fact came to my notice only around 19/03/2019 when I was going through the documents placed in the drawer at my home. I hereby state that thereafter, I immediately intimated the above fact to the C.A., Mr. Gujarathi and forwarded the appellate order to his Office on 20/03/2019 for taking further action.”

3. Considering the above reasons given by the assessee in the affidavit, I find it is a **fit case for condoning the delay of 59 days**. After condoning the delay, I proceed to adjudicate the appeal of the assessee in the following paragraphs.

4. The grounds raised by the assessee are as under :-

*“1. The learned CIT(A) erred in making the **addition of Rs. 8,18,695/-** u/s 69C towards alleged unaccounted interest paid by the assessee to M/s. Religare Finvest Ltd. without appreciating that the said addition was not justified on facts and in law .*

2. The learned CIT(A) erred in making the addition of Rs.8,18,695/- u/s 69C on the ground that the quantum of interest expenditure on loan obtained by the assessee from Religare Finvest Ltd. debited in the books of the assessee was Rs.45,99,830/- whereas in the Certificate issued by the C.A. of M/s. Religare Finvest Ltd. in Form No.26A, the quantum of interest paid by the assessee in this year was reflected at Rs.54,18,525/- and thereby holding that the difference of Rs.8,18,695/- is to be taxed as unexplained expenditure u/s 69C of the Act.

3. The learned CIT(A) failed to appreciate that the entire amount of interest paid by the assessee on loan taken from M/s. Religare Finvest Ltd. was accounted for in the books of the assessee and the same was paid through bank accounts reflected in the books and therefore, the sources of the entire repayment of loan were duly explained and hence, there was no reason to make any addition u/s 69C in the case of the assessee.

4. The assessee submits that the entire repayment of loan made to M/s. Religare Finvest Ltd. was made through banking channel and the same was duly recorded in the books of accounts of the assessee and hence, the

difference in the quantum of 'interest' reflected in the Form 26A issued by C.A. of M/s. Religare Finvest Ltd. vis-a-vis the quantum of 'interest' debited in the books of the assessee did not justify any addition u/s 69C towards alleged unaccounted expenditure.

5. *The appellant craves, leave to add, alter, amend and delete any of the above grounds of appeal."*

5. The grounds are argumentative and the core issue relates to the addition of Rs.8,18,695/-.

6. Before me, at the outset, ld. Counsel for the assessee submitted that the issue under consideration relates to the addition of Rs.8,18,695/- u/s 194A r.w.s. 40(a)(ia) of the Act. Explaining the brief facts of the case, ld. Counsel submitted that the Assessing Officer originally made addition of Rs.13,79,950/- as per discussion given in para 3.1 of the assessment order. As per the said para, the assessee took a secured loan from M/s Religare Finvest Ltd. against the development of a property and paid sum of Rs.45,99,830/- as interest to M/s Religare Finvest Ltd. When the Assessing Officer examined the related TDS particulars, Assessing Officer noticed some discrepancy. There was absence of TDS certificate/Form No.26AS from M/s Religare Finvest Ltd. confirming the TDS particulars. Hence, 30% of the said interest payments of Rs.45,99,830/- amounting to Rs.13,79,950/- was disallowed by the Assessing Officer in the assessment.

7. During the first appellate proceedings, regarding this issue, the assessee furnished the Form No.26AS of the payee. On finding, M/s Religare Finvest Ltd. showed the payments to the tune of Rs.54,18,525/- which is different from Rs.45,99,830/-, the CIT(A) restricted the addition to Rs.8,18,695/- (Rs.54,18,525/- minus Rs.45,99,830/-) as unaccounted

income. The CIT(A) directed the Assessing Officer to re-compute the tax payment by the assessee as per discussion given in para 5 of the CIT(A)'s order.

8. Aggrieved with the same, the assessee is in appeal before the Tribunal with the above extracted grounds.

9. Before me, on this issue, ld. Counsel for the assessee submitted that the reconciliation furnished by the assessee was not properly appreciated by the CIT(A) while restricting the addition of Rs.8,18,695/-. In the regard, ld. Counsel pleaded for remanding the issue to the file of the Assessing Officer with limited purpose of reconciliation of figures of the assessee with that of M/s Religare Finvest Ltd. in the light of the loan agreements with Religare.

10. On hearing both the sides on this limited issue, I find that there is requirement of reading the loan agreement between the assessee and M/s Religare Finvest Ltd., EMI particulars, actual interest payable by the assessee to M/s Religare Finvest Ltd., the application of TDS provisions of the Act to the interest payment etc. The Assessing Officer should go by the documentation and the liability of the assessee in matters of interest payments and not by the TDS figures available on the TDS certificate or Form No.26AS of M/s Religare Finvest Ltd. The Assessing Officer is directed to apply the TDS provisions of the Act strictly and re-do the assessment on this addition. In any case, the CIT(A) also given certain directions that he should be considered strictly in tune with the provisions

of the Act. With these directions, this issue is remanded to the file of the Assessing Officer. The Assessing Officer shall grant reasonable opportunity of being heard to the assessee in accordance with set principles of natural justice. Thus, the grounds raised by the assessee are allowed for statistical purposes.

11. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on this 16th day of December, 2019.

Sd/-
(D. KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 16th December, 2019.
Sujeet

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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