

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No's.6152 & 6153/Mum/2018
(Assessment Years: 2013-14 & 2014-15)**

Milind & Associates B-1, SO-OM Apartment Sant Ramdas Marg Mulund East Mumbai-400 081	Vs.	ITO-29(2)(2) C-10 Bandra Kurla Complex Bandra Mumbai-400 050
PAN/GIR No.AANFM2707R		
(Appellant)	..	Respondent)

Revenue by	Smt. Jothilakshmi Nayak, Sr.AR (DR)
Assessee by	Shri. S.V.Joshi,AR
Date of Hearing	02/12/2019
Date of Pronouncement	02/12/2019

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

These two appeals filed by the assessee are directed against separate, but identical orders of the Commissioner of Income Tax (Appeals)-40, Mumbai, both dated 18/06/2018 and for the Assessment Years (AY) 2013-14 & 2014-15. Since, the facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are disposed-off by this consolidated order.

ITA No. 6152/Mum/2018 For AY 2013-14

2. The assessee has, more or less raised common grounds of appeal for both Assessment Year's. Therefore, for the sake of

brevity, grounds of appeal filed for AY 2013-14 are reproduced as under:-

1. *The learned Commissioner of Income Tax (Appeals) - 40, Mumbai (the learned CIT-A) erred in upholding the disallowance of Interest paid on loans in excess of 12% p.a. by the assessee firm to its partners by invoking provisions of sec. 40 (b) (iv).*
2. *The learned CIT (A) failed to appreciate that the provisions of sec, 40(b) apply only to interest paid on capital to partners & not on loans taken by the firm from its partners,*
3. *The learned CIT(A) failed to appreciate that payment of interest on loans taken from partners is duly authorized by the partnership deed dated 01-04-2006 r.w. partnership deed dated 21-12-2012.*
4. *The appellant craves leave to add to, alter, delete or modify any of the above grounds of appeal.*

3. The brief facts of the case are that the assessee is a partnership firm engaged in the business of builder and developer, filed its return of income for AY 2013-14 on 25/09/2013, declaring total income at Rs. Nil. The case was selected for scrutiny and during the course of assessment proceedings, the Ld. AO noticed that the assessee has paid interest on loans taken from partners @ 15% per annum and hence, called upon the assessee to file necessary details, including partnership deed copy to ascertain the facts with regard to payments of interest, in light of provision of section 40(b)(iv) of the I.T.Act, 1961. In response, the assessee has filed partnership deed copy and submitted that although, the firm has paid 15% interest on loans taken from partners, but the provisions of section 40(b)(iv) of the I.T.Act 1961 is applicable only to interest paid on partners capital account, but not interest paid on loans taken from partners. The Ld. AO did not accept the arguments of the assessee and made additions towards excess interest paid over and above 12% p.a, as permissible u/s 40(b)(iv) of the Act, 1961 and made additions of Rs. 15,39,425/- under the provision of section 40(b)(iv) of the I.T.Act 1961. The assessee carried the matter in appeal before

the Ld.CIT(A), but could not succeed. The Ld.CIT(A), for detailed reasons recorded in his appellate order, dated 18/06/2018 confirmed additions made by the Ld.AO towards excess interest paid over and above 12% p.a prescribed by the statue under the provision of section 40(b)(iv) of the Act, 1961. Aggrieved by the Ld.CIT(A) order, the assessee is in appeal before us.

4. The Ld. AR, for the assessee submitted that the Ld.CIT(A) was erred in upholding the disallowances of interest paid on loans in excess of 12% P. A by invoking provision of section 40(b)(iv) of the I.T.Act 1961, without appreciating the fact that the provisions of said section does not apply to interest paid on loans taken from partners. The Ld. AR, further submitted that although, the assessee has specified 12% interest on partners capital account as per the deed of partnership, dated 01/04/2006, but, when it comes to interest on loans, the same needs to be considered, in light of commercial expediency and if unreasonably interest is paid, then the same may be considered, in light of provision of section 40A(2), but not under the provision of section 40(b)(iv) of the I.T.Act, 1961.

5. The Ld. DR, on the other hand, strongly supporting order of the Ld.CIT(A) submitted that clause (6) of partnership deed, dated 01/04/2006 is very clear as per which, the assessee specified 12% interest per annum on partners capital account, including loan. Therefore, it is incorrect to say that interest on loans taken from partners does not come under the purview of section 40(b)(iv) of the Act,1961. The Ld. DR, further submitted that if you go through provision of section 40(b)(iv), it is very clear, as per which it does not restrict disallowances to interest paid on capital account, but it says

any interest payment to partners over and above 12% is not allowed as deduction. The Ld. AO, as well as the Ld.CIT(A) has brought out clear facts to the effect that interest paid on loans taken from partners over and above 12% is not allowable and hence, the order of the authorities below should be upheld.

6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The provisions of section 40(b)(iv) deals with any payment of interest to any partner, which is authorized by, or in accordance with the terms of the partnership deed and relates to any period, falling after the date of such partnership deed, insofar as, such amount exceeds the amount calculated @12% p.a shall not be allowed as deduction. Further, clause (6) of the partnership deed dated 01/04/2006 clearly specified the rate of interest payable to partners on capital/ current account or loan account as per which, the partner shall be entitled for 12% interest on capital or loan account. In light of above factual and legal background, if you consider the rate of interest paid on loans taken from partners, then it is certainly beyond the rate of interest specified under the provision of section 40(b)(iv) of the I.T.Act, 1961. Further, although the assessee claims that interest paid on loans taken from partners does not comes under the purview of provision of section 40(b)(iv), but on plain reading of said section, it is very clear that it does not restrict disallowances of interest over and above 12% only on partners capital account. Therefore, we are of the considered view that there is no merit in contention of the assessee that interest loan taken from partners is not comes within the purview of provision of section 40(b)(iv) of the I.T.Act 1961.

7. In this view of the matter and considering the facts and circumstances of this case, we are of the considered view that there is no error in the findings of the Ld. AO, as well as the Ld.CIT(A) in disallowed excess interest paid on loans taken from partners over and above 12% P.A as prescribed under the provision of section 40(b)(iv) of the I.T.Act, 1961. Hence, we are inclined to uphold, the findings of the Ld.CIT(A) and dismissed appeal filed by the assessee.

ITA No. 6153/Mum/2018 for AY 2014-15

8. The assessee has raised the following grounds of appeal.

1. *The learned Commissioner of Income Tax (Appeals) - 40, Mumbai (the learned CIT-A) erred in upholding the disallowance of Interest paid on loans in excess of 12% p.a. by the assessee firm to its partners by invoking provisions of sec. 40 (b) (iv).*
2. *The learned CIT (A) failed to appreciate that the provisions of sec, 40(b) apply only to interest paid on capital to partners & not on loans taken by the firm from its partners,*
3. *The learned CIT(A) failed to appreciate that payment of interest on loans taken from partners is duly authorized by the partnership deed dated 01-04-2006 r.w. partnership deed dated 21-12-2012.*
4. *The appellant craves leave to add to, alter, delete or modify any of the above grounds of appeal.*

9. The facts and issues involved in this appeal are similar to facts and issues, which we had considered in ITA No. 6152/Mum/23018 for AY 2013-14. The reasons given by us in preceding paragraphs shall mutatis-mutandis apply to this appeal also. Therefore, for detailed reasons recorded in preceding paragraphs in ITA No. 6152/Mum/2018, we dismissed appeal filed by the assessee for AY 2014-15.

10. In the result, appeals filed by the assessee for both assessment years are dismissed.

Order pronounced in the open court on this day: 02/12/2019

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated: 02/12/2019
Thirumalesh Sr.PS

Copy of the Order forwarded to :

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

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai