

**IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH
MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.5824/Mum/2018
(Assessment Year :2010-11)**

Shri Nitin T Sanghavi 703/704, Rudraksh CHS Ltd Nariman Road, Vile Parle (E) Mumbai – 400 057	Vs.	Addl. Commissioner of Income Tax – 13(1) Range 13(1), 4 th Floor Aayakar Bhavan Mumbai – 400 020
PAN/GIR No.ABAPS8799P		
(Appellant)	..	(Respondent)

Assessee by	Shri Sameer G. Dalal
Revenue by	Ms. Kavita P Kaushik
Date of Hearing	06/01/2020
Date of Pronouncement	08/01/2020

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.5824/Mum/2018 for A.Y.2010-11 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-58, Mumbai in appeal No.CIT(A)-58, Mumbai/10446/2017-18 dated 26/04/2013 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 26th March 2013 by the Id. Addl. Commissioner of Income Tax, Range 13(1), Mumbai (hereinafter referred to as Id. AO).

2. The ground Nos. 1.1 to 1.3 raised by the assessee are with regard to challenging the action of the Id. CIT(A) in upholding the disallowance

of interest made by the Id. AO u/s.40A(2)(a) of the Act in the sum of Rs.4,91,091/- in respect of interest paid to Shri Trambaklal Sanghavi and Shri Nitin T Sanghavi (HUF).

2.1. We have heard rival submissions and perused the materials available on record. We find that assessee is engaged in the business of import and resale of ball bearings and had filed his return of income for the A.Y.2010-11 on 13/09/2010 declaring total income of Rs.1,04,72,840/-. We find that the Id. AO on perusal of various details filed by the assessee observed that assessee had taken loans from certain related parties in his proprietary concern M/s. Shreya Enterprises. These loans were borrowed by the assessee at an interest rate of 15% per annum. The details of loans borrowed by the assessee and interest paid thereon during the year are as under:-

S. No.	Name of related party	Opening Balance	Loans taken (Rs.)	Rate of interest	Interest paid (Rs.)
1	Falguni N. Sanghavi	0	1500000	15% p.a.	141833
2	Nitin T. Sanghavi (HUF)	0	1375000	15% p.a.	66339
3	Trambaklal J. Sanghavi	0	1300000	15% p.a.	179203

2.2. The Id. AO observed that all the aforesaid three parties fall within the ambit of related parties within the meaning of Section 40A(2) of the Act. The Id. AO also observed that assessee had borrowed loans from outside parties in M/s. Shreya Enterprises bearing an interest rate of 9% per annum. In these circumstances, the Id. AO showcaused the assessee to justify the fact of paying higher interest to related parties.

2.3. In response, the assessee replied that in earlier years, loans were borrowed by the assessee in Shreya Enterprises from outside parties carrying an interest rate of 9% per annum, whereas during the year under consideration, no third party was willing to advance loan to assessee at 9% interest per annum and only relatives of the assessee came forward to lend monies with a condition that the said loans would carry an interest rate of 15% per annum. Since, the assessee was in urgent need of monies in its growing business during the year under consideration, which is evident from the fact that the turnover has increased from Rs.5,47,17,750/- to Rs.10,13,56,957/-, he proceeded to borrow loans from his related parties at an interest rate of 15% per annum. The assessee also submitted that the market rate for unsecured loans was 18% per annum and accordingly, pleaded that the rate of interest at 15% per annum paid by him to related parties was in accordance with the market rate. The Id. AO however, did not agree to the contentions of this assessee and held that interest @12% per annum would be just and reasonable for this related party and accordingly, disallowed the remaining 3% interest to be excessive or unreasonable within the meaning of Section 40A(2) of the Act. It is pertinent to note that the Id. AO had accepted the fact of payment of interest @15% per annum in respect of interest paid to one of the relatives Mr. Falguni N Sanghavi whereas the Id. AO had restricted the interest @12% to be reasonable in respect of interest paid to other parties viz. Mr. Nitin T Sanghavi (HUF) and Trambaklall J Sanghavi.

2.4. We find that the Id. CIT(A) in para 8 of his order had observed as under:-

“8. It can be seen that rate of 12% is fixed without really ascertaining what market rate is. No comparable is analysed. The appellant stated 18% to be market rate but Assessing Officer relied on the fact that assessee has taken

loan at 12% in current year. Assessee was not able to establish basis for this soft loan. Overall I find things weigh in favour of Assessing Officer, Hence, the ground is dismissed.”

2.5. From the above, it could be safely concluded that the Id. CIT(A) had accepted to the fact that the Id. AO had not brought any comparable rate of interest to justify the reduction of interest from 15% to 12% which is a pre-requisite before invoking the provisions of Section 40A(2) of the Act. At the cost of repetition, we find that the lower authorities had indeed accepted the interest payment made by the assessee to one of the related parties i.e. Shri Falguni T Sanghavi at 15% per annum to be reasonable. When the same rate of 15% per annum is paid to other two parties in respect of loans borrowed during the year by the assessee, there is no reason for reducing the same to 12% by the revenue more so without bringing any comparable instances which is a pre-requisite for invocation of provisions of Section 40A(2) of the Act. Hence, we have no hesitation in directing the Id. AO to delete the disallowance of interest made u/s.40A(2) of the Act in the facts and circumstances of the instant case. Accordingly, the ground Nos.1.1 to 1.3 raised by the assessee are allowed.

3. The ground Nos. 2.1 to 2.3 raised by the assessee are with regard to challenging the action of the Id. CIT(A) in holding the disallowance of interest to the tune of Rs.12,48,377/- in the facts and circumstances of the case.

3.1. We have heard rival submissions. We find from the computation of total income annexed in pages 1-2 of the paper book that assessee had derived income from salary, income from business and income from other sources during the year under consideration. We find that the assessee had advanced certain loans to the following three parties:-

1. NBU Bearings Pvt. Ltd
2. Vidisha Real Estate Development Pvt. Ltd.,
3. Vidisha Developers.

3.2. The total interest earned by the assessee from lending to aforesaid three parties including SB interest worked out to Rs.8,81,763/- which was disclosed by the assessee under the head 'income from other sources' in the return of income. Against this interest income, the assessee set off the interest paid on loans in the sum of Rs.20,32,523/- and declared loss from income from other sources in the sum of Rs.11,50,760/-. In the opinion of the assessee, which is evident by its own admission in the return of income, that both the borrowings from various parties on which interest is paid as well as lending to aforesaid three parties on which interest is received were not part of business activities of the assessee and it is only residual activity of the assessee. The income /losses derived from this residual activity has been correctly shown by the assessee under the head 'income from other sources' which has not been disturbed by the revenue in the final computation. Hence, the entire argument of the Id. AR that it is apparently having mixed and sufficient own funds to make advances to the aforesaid three parties are of absolutely no relevance and what is to be seen is only whether the interest bearing funds have been utilised for making interest bearing / non-interest bearing advances within the meaning of Section 57(iii) of the Act. We find that the Id. CIT(A) had categorically observed that the onus is on the assessee to prove that the assessee had earned interest income on loans given by him and interest paid on loans taken by him could be reduced from the said interest income only if the assessee was able to prove the direct nexus of borrowed funds with the loans given by him. We find that the Id. CIT(A) had categorically observed further that assessee in the instant case had

not proved that one to one nexus to drive home the point that the interest paid on loans is eligible for deduction u/s. 57(iii) of the Act. This finding of the Id. CIT(A) has not been controverted by the Id. AR before us. Hence, we do not deem it fit to interfere with the findings of the Id. CIT(A). Accordingly, ground No.2.1 to 2.3 raised by the assessee are dismissed.

4. The ground No.3.1 raised by the assessee is with regard to chargeability to interest u/s.234B of the Act which is consequential in nature.

5. The ground No.4.1 raised by the assessee is general in nature and does not require any specific adjudication.

6. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on this 08/01/2020

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 08/01/2020
KARUNA, *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.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai