

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

BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER

**ITA No.111/Mum/2019
(Assessment Year: 2010-11)**

Mukesh T Dand, 111, 3B, Kalaptaru Aura, LBS Road, Ghatkopar West, Mumbai-400086.	Vs.	I.T.O.-5(3)(2), 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.
PAN/GIR No.AACPD 6265 A		
(Appellant)	..	(Respondent)

Assessee by	Shri Hitesh M. Dharamshi (AR)
Revenue by	Shri Akhtar H Ansari (DR)
Date of Hearing	14/01/2020
Date of Pronouncement	20/01/2020

आदेश / ORDER

PER: R.C. SHARMA, A.M.

This appeal by the assessee is directed against the order dated 29/08/2018 of Id. CIT(A)-10, Mumbai for the A.Y. 2010-11 in the matter of order passed u/s 143(3) of the Income Tax Act, 1961 (in short, the Act).

2. Grievance of the assessee relates to not allowing deduction on account of interest paid to the bank and also salary paid to the driver.

3. Rival contentions have been heard and record perused. Facts in brief are that the assessee is an individual and filed his return of income on 31/07/2010 declaring total income of Rs. 25,52,260/-. The

return was processed U/s 143(1) of the Act and subsequently selected for scrutiny. An assessment U/s 143(3) of the Act determining the total income of Rs. 31,14,870/- was concluded on 28/12/2012 by disallowing expenditure of Rs. 91,847/- besides the addition of Rs. 5,81,061/- on account of undisclosed interest received from M/s Sachinam Travels Pvt. Ltd.

4. The A.O. observed that the assessee has not disclosed interest income and that expenditure of Rs. 91,847/- claimed for earning consultancy income of Rs. 2,34,000/- could not be proved. Before the Id. CIT(A), it was contended by the Id AR that the assessee has earned interest income of Rs. 5,81,061/- out of the fund borrowed from Oriental Bank of Commerce. As per the assessee, he had taken loan against the fixed deposit from Oriental Bank of Commerce and which was further given on interest to M/s Sachinam Travels Pvt. Ltd.. Accordingly, it was prayed that only the net interest income should be brought to tax after giving deduction of interest paid. In respect of expenditure of Rs. 91,847/-, it was the contention of the assessee that the same was incurred as salary paid to the driver which was in the course of earning the consultancy income. However, both the additions were confirmed by the Id. CIT(A) and against which the assessee is in further appeal before the ITAT.

5. From the record I found that necessary evidence with regard to taking of loan from Oriental Bank of Commerce was not submitted before the A.O.. The question of allowability of interest on borrowed fund which is actually utilized for advancing to other person on which the assessee has earned interest income is to be considered only when the assessee can establish direct nexus between the funds borrowed and the very same funds have been advanced for earning interest income. In all fairness, I restore the matter back to the file of the A.O. with direction to assessee to file complete details of borrowings made from the bank, interest paid thereon and utilization of such borrowed funds for advancing to M/s Sachinam Travels Pvt. Ltd. on which interest income was earned. The A.O. is to reexamine all the documents and decide the matter afresh as per law after giving due and reasonable opportunity of hearing to the assessee.

6. The issue with regard to driver's salary of Rs. 91,847/- for earning consultancy income of Rs. 2,34,000/- is also restored back to the file of the A.O. with direction to assessee to file necessary documents with regard to payment of salary to driver and utilization of car for the purpose of earning consultancy income. The A.O. is to decide the issue as per law after providing due and reasonable opportunity of hearing to the assessee.

7. In the result, appeal of the assessee is allowed in part for statistical purposes only.

Order pronounced in the open court on 20th January, 2020.

**Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER**

Mumbai; Dated 20/01/2020
*Ranjan

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