

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

**[Coram: Pramod Kumar (Vice President)
And Ram Lal Negi (Judicial Member)]**

ITA No. 4960/Mum/2018
Assessment year: 2013-14

Kartex Exports

46, Kolsa Street,
1st Floor, Pydhonie,
Mumbai-400 003
[PAN: AACFK 0705 E]

.....Appellant

Vs

ACIT 18(2)

Room No. 123A, 1st Floor,
Aaykar Bhavan, M. K. Road,
Mumbai – 400 020

.....Respondent

Appearances by

Atul Mehta for the appellant

Pankaj Kumar for the respondent

Date of concluding the hearing : December 02, 2019
Date of pronouncement : February 25, 2020

ORDER

Per Pramod Kumar, VP:

1. By way of this appeal, the assessee-appellant has challenged the correctness of the learned CIT(A)'s order dated 4th June, 2018, in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2013-14.

2. Grievances raised by the appellant are as follows:

1.01 The Learned CIT(A) has failed to appreciate that the learned AO has disallowed the interest expenses u/s. 37(1) of the Act considering that the said expense was not incurred wholly and exclusively for the purpose of the business while the learned CIT(A) has disallowed the part of the said expenditure u/s. 40A(2)(b) of the Act without giving any

opportunity and / or show cause to the Appellant to explain and prove the reasonableness of the interest payment made to persons covered u/s. 40A(2)(b) of the Act.

1.02 The learned CIT(A) grossly erred in not giving any opportunity to the Appellant Firm to give its explanation for payment of interest to related persons and its reasonableness and disallowed interest of Rs 7,31,537/-.

1.03 The learned CIT(A) grossly erred in not considering the explanation filed by the Appellant Firm before the learned AO in respect of reasonableness of interest paid to parties covered u/s. 40A(2)(b) of the Act, a copy of which was submitted to the learned CIT(A) in the paper book submitted to her.

Without Prejudice to the above ground :

2.01 The learned CIT(A) erred in law as well as in fact in disallowing interest paid to parties covered u/s. 40A(2)(b) of the Act of Rs.7,31,537/- as excessive interest without considering the fact that the Appellant and its sister firms were borrowing secured funds from banks at almost 17% p.a. and hence the interest paid to related parties was reasonable and not excessive.

2.02 The learned CIT(A) erred in law as well as in fact in not considering the fact that the amounts borrowed by the Appellant Firm from persons covered u/s. 40(A)(2)(b) of the Act was wholly and exclusive for the purpose of the business of the Appellant Firm and there cannot be any disallowance on that count.

3. To adjudicate on this appeal, only a few material facts need to be taken note of. The assessee before us is a partnership firm engaged in the business of manufacturing and trading of grey cloth and bleached cloth. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has paid interest @ 18% and in one case even 21%, to the persons specified under section 40A(2)(b). These loans were admittedly unsecured loans, without any security whatsoever, and the assessee's claim is that the interest paid is as prevalent market rate. The Assessing Officer was, however, of the view that this rate of interest is excessive and unreasonable. He, accordingly, disallowed interest paid in excess of 12% p.a.

4. Aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) but without much success. The Id. CIT(A) restricted the disallowance to interest payment in excess of 15%. The assessee is not satisfied and is in further appeal before us.

5. We have heard both the rival contentions, perused the material on record and duly considered the facts of the case in light of the applicable legal positions.

6. We find that there is no indication by any of the authorities below to the effect as to on what basis the market rate of interest has been ascertained. We have also noted that the loans are fully unsecured and on demand. Under these circumstances, and in the absence of any material to indicate that the interest rate paid by the assessee is excessive or

unreasonable, we are of the considered view that the interest paid by the assessee is not hit by the provisions of section 40A(2)(b). In any event, the unsecured loans on demand being taken at interest @ 18%, or even @ 21%, are quite in consonance with the ground realities in business. It is also an undisputed position that the assessee had borrowed secured loans from banks @ 17% p.a. The impugned payments cannot therefore be said to be excessive.

7. We, therefore, uphold the plea of the assessee, and direct the Assessing Officer to delete the impugned disallowance.

8. In the result, the appeal is allowed in terms indicated above. Pronounced in the open court today on the 25th day of February, 2020

Sd/-

Ram Lal Negi
(Judicial Member)

Sd/-

Pramod Kumar
(Vice President)

Mumbai, dated the 25th day of February, 2020
Roshani, Sr. PS

Copies to:

(1)	<i>The Applicant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai