

THE INCOME TAX APPELLATE TRIBUNAL
"A" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Pavankumar Gadale (JM)

I.T.A. No. 3085/Mum/2013 (Assessment Year 2009-10)

Anil Mohandas Lakhani-HUF 405, Amore, 4 th Floor Junction of 2 nd & 4 th Road Opp. Corporation Bank, Khar West, Mumbai-400 052. PAN : AADHA2707D (Appellant)	Vs.	ITO-19(1)(3) Mumbai (Respondent)
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Assessee by	None
Department by	Shri Brajendra Kumar
Date of Hearing	08.02.2021
Date of Pronouncement	01.04.2021

ORDER

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] dated 5.11.2012 and pertains to assessment year 2009-10.

2. The grounds of appeal read as under :

1.) The Learned Commissioner of Income Tax (Appeals) order is entirely contradictory to law and facts of the case to the extent he confirmed the addition made by the Assessing officer's order issued u/s 143(3) of the Income Tax Act.

2.) The learned Commissioner of Income Tax (Appeal), was not justified in confirming the disallowance of Interest to the extent of Rs. 20,28,015/- on account of interest on term loan , rejecting the submissions and facts of the case, Thus the Commissioner's order is totally violative of natural justice.

3.) The learned CIT (Appeals) should have observed that the assessing officer did not follow the principle of natural justice as he did not grant reasonable time for furnishing evidence, ignoring the facts on records.

4.) The learned CIT (Appeals) as well as the learned assessing officer was not justified in disallowing the various expenses such as telephone expenses, traveling expenses and sale of motor car. The appellant therefore prays to

delete the same. The submission along with various judicial pronouncement made in this regard was not accepted at all.

5.) The appellant craves leave to the amend, alter or delete any of the above ground of appeal.

6.) In view of all these and other reasons, which may be produced during the process of hearing of appeal, the appeal may, please be allowed and justice rendered.

3. Brief facts of the case are that the Assessing Officer made disallowance of interest paid to bank loan amounting to Rs. 20,28,015/- on his reasoning that the same was not for business purpose. The Assessing Officer had rejected the following explanation by assessee :-

"4) Justification for Bank Loan : Our client was in financial crisis as he was not getting payment from his debtors situated at out of Mumbai i.e. Ahmedabad, Chennai, Bangalore, Delhi, etc. and he was supposed to pay his creditors in time i.e.60 to 90 days. So to pay off his creditors & maintain goodwill in the market he has to take loan from bank against mortgage of property on his personal name. We further state that bank arranged finance by way of term loan and he has not taken Loan for setup of new plant to purchase any fixed assets.

The authorized representative of the assessee has further submitted vide the same letter as under .

"9) Justification of interest debited to Profit & Loss A/c. where only stock was resold during the year : Our client was passing through financial crisis. As huge stock is lying in godown and he was thinking of winding up the business by selling the existing stock. However, administrative expenses debited to Profit & Loss A/c. are incurred at 50% compare to last year in regular course of business except interest on loan."?

4. Upon assessee's appeal learned CIT(A) confirmed the Assessing Officer's action. He held as under :-

"I have carefully gone through the Assessment Order and the submissions made on behalf of the appellant. In this case, the appellant had claimed Rs.20,28,01.5/- on account of interest on term loan. The A.O. disallowed the claim of the appellant on the ground that on one hand the appellant wants to pay creditors promptly by borrowing loans on interest and on the other hand the appellant has shown huge outstanding debtors as on 31.03.2009 to the tune of Rs.2,12,83,728/-, which are more than entire sales of the appellant. On the debtors no interest has been charged by the appellant(HUF). It was also seen that out of the outstanding debtors an amount of Rs.25,92,478/- was due from M/s. Mohan Impex, which is an associated concern of the appellant. Further, the appellant has sold goods even to those debtor parties from whom the amounts were not forthcoming. One such party is

M/s.Pruknil Apparel whose outstanding balance as on 31.03.2009 is Rs.79,18,5747-. Another contention of the appellant regarding the justification of interest debited to P&L A/c. is that the appellant was thinking of winding up the business and administrative expenses debited to P&L A/c are incurred at 50% compared to last year was also not found acceptable by the A.O. as the incident administrative expenses is dependent on the sales turnover and the level of business activity which is significantly lower at Rs.1,76,94,772/- during the year as compared to sales of last year which was at Rs. 10,68,96,183/-. Therefore, administrative expenses had to be significantly lower. Moreover, if the appellant was thinking of winding up the business then taking the term loan which was repayable over the period of next 6 years was not justified. In view of the above discussion, the A.O. disallowed interest of Rs.20,28,015/- claimed as deduction u/s 37(1) of the I.T. Act. Reliance in this connection is placed on the decision of the CIT vs. H.R. Sugar Factory Pvt. Ltd. [187 ITR 363 (All.)]. In this connection, it was held that *"had the money not advanced to the directors it would have been available to the assessee for its business purposes and to that extent it may not have been necessary to borrow from the banks"*. In this case also, had the money not been advanced interest free to associate concern M/s. Mohan Impex to that extent, it may not had been necessary to borrow from the banks. Similarly, if the debtors were also charged interest perhaps there was no need to pay interest of Rs.20,28,015/-. Reliance is also placed on the decision of M/s. Triveni Engineering Works Ltd. Vs. CIT [167 ITR 742 (All.)]. In view of the above discussion, I am of the considered view that the A.O. is quite justified in making the impugned disallowance. Therefore, the disallowance so made by the A.O. of Rs.20,28,015/- is confirmed".

5. Furthermore assessing officer has made adhoc disallowance at the rate of 25% of the expenditure on travelling and telephone expenditure. This was done on the premise that complete details and vouchers were not produced and that personal element of the use cannot be ruled out.
6. Upon assessee's appeal learned CIT(A) reduced the disallowance from 25% to 20% of the above said expenditure.
7. Against this order assessee is in appeal before us. We have heard the learned departmental representative. None appeared on behalf of the assessee. The notice for hearing has returned unserved.
8. Upon careful consideration as regards the disallowance of interest expenses is concerned, we find that the revenue authorities are not disputing that assessee has obtained the term loan from the bank. That the interest has

also been paid to the bank. The view of the authorities below is that assessee did not need to take the term loan for paying its creditors. We find that it is also settled law that revenue authorities cannot step into the shoes of businessman and decide how the business should be conducted. Why the assessee is not charging from debtors and why it is using the money obtained from bank loan to pay the creditor is a businessman discretion and Assessing Officer cannot decide this aspect. Without any finding that assessee has actually not taken the loan and not paid interest on the loan or that assessee had diverted interest-bearing funds such addition lack cogency. In this view of the matter in our considered opinion the addition is not sustainable. Hence, the same is directed to be deleted.

9. As regards disallowance on estimated basis out of travelling and telephone expenses we find that the same has been done without bringing on record cogent material. Just writing that personal expenses cannot be ruled out the same cannot be ipso facto a ground for disallowance of expenditure. In this view of the matter in our considered opinion the addition made by the revenue authorities in this regard is not sustainable. Hence we direct that the same should be deleted.

10. In the result this appeal by the assessee stands allowed.

Pronounced in the open court on 1.4.2021.

Sd/-
(PAVANKUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 01/04/2021

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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