

अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE RAJPAL YADAV HON'BLE VICE PRESIDENT
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER
Virtual Hearing**

**ITA No.162/Ind/2020
Assessment Year:2014-15**

Smt. Manisha Kalani Indore (Appellant)	<u>बनाम/</u> Vs.	ITO-1(3) Indore (Respondent)
P.A. No.ACBPK8197P		

**ITA No.163/Ind/2020
Assessment Year:2014-15**

Smt. Namita Kalani Indore (Appellant)	<u>बनाम/</u> Vs.	ITO-1(3) Indore (Respondent)
P.A. No.ABMPK6861C		

Appellant by	Shri Manjit Sachdeva & Avinash Gaur, ARs	
Respondent by	Shri Harshit Bari, Sr. DR	
Date of Hearing:	05.07.2021	
Date of Pronouncement:	20.07.2021	

आदेश / O R D E R

PER MANISH BORAD:

The above captioned appeals at the instance of Assessee are directed against the respective orders of Ld. Commissioner of

Income Tax(Appeals)-1, (in short 'CIT(A)'), Indore dated 03.02.2020 which is arising out of order u/s 143(3) of the Income Tax Act 1961(in short the 'Act') dated 27.12.2016 & 28.12.2016 framed by ITO-1(3) Indore.

Grounds of appeal in ITANo.162/Ind/2020 (Manisha Kalani)

1. That the Ld. CIT(A) erred in confirming disallowance made by the Assessing Officer of Rs.1173666/- on account of interest expense.
2. That the Ld. CIT(A) failed to appreciate the submission made by the appellant.
3. That the disallowance made is not based on the facts of the case and needs to be deleted.

Grounds of appeal in ITANo.163/Ind/2020, (Namita Kalani)

1. That the Ld. CIT(A) erred in confirming disallowance made by the Assessing Officer of Rs.7,36,649/- on account of interest expense.
2. That the Ld. CIT(A) failed to appreciate the submission made by the appellant.
3. That the disallowance made is not based on the facts of the case and needs to be deleted.

2. At the outset, Ld. counsel for the assessee submitted that the common issue raised in the instant two appeals relating to disallowance of interest expense is squarely covered in favour of the assessee by decision of the Hon'ble Indore Bench vide ITANo.87/Ind/2020 & 956/Ind/2019 dated 30.04.2021 in the case of Smt. Padma Kalani [who is also from the same family as

that of the assessee(s)] decided in favour of the assessee adjudicating common issue under the identical facts.

3. Ld. Departmental Representative (DR) though supported the finding of both lower authorities could not controvert the submissions that the common issue raised in the instant appeals is covered by the decision of this Tribunal in case of *Padma Kalani (supra)*.

4. We have heard rival contentions and perused the records placed before us. Though the assessee(s) have raised various grounds of appeal but the common issue relates to disallowance of interest expense confirmed by the ld. CIT(A) which were made by the Ld. AO, on the basis of his observation during the course of scrutiny proceedings regarding low rate of interest charged on loans given in some cases as compared to higher rate of interest paid on the loan taken.

5. On perusal of records, we observe that common facts arise in both the cases are that the assessee(s) took loans and paid interest ranging from 12 to 16.2 % but charged the interest between 6 to 18% on loans given. Ld. AO disallowed the

proportionate interest expense for the loans on which assesseees received the interest @ 6%. Thus disallowance of Rs.11,73,666/- and Rs.7,36,649/- was made by Ld. AO in the case of Smt. Manisha Kalani & Smt. Namita Kalani, which was subsequently confirmed by the Ld. CIT(A).

6. We further find that the similar issue of disallowance of interest expense in case of another family member namely Padma Kalani came up for adjudication before this Tribunal in ITANo.87/Ind/2020 & 956/Ind/2019 and in this case also under similar facts, basis of disallowance of interest expense was same. This tribunal after considering the facts of the case decided in favour of the assessee observing as follows:

9. We have heard rival contentions and perused the records placed before us and carefully gone through the submissions made by the Ld. Counsel for the assessee as well as finding of both the lower authorities. The instant appeal pertains to Assessment Years 2013-14 and 2014-15. Though various grounds are raised but the sole grievance is commonly raised against the disallowance of interest expenditure of Rs. 9,22,643/- and Rs.11,20,776/- for Assessment Years 2013-14 and 2014-15 respectively.

10. We observe that the assessee is into money lending business and holds registration certificate for running this business given by the local authority. Books of accounts are regularly maintained and audited u/s 44AB of the Act. Assessee is regularly accepting both secured and unsecured loans on interest and giving loans and advances for earning income. Details for party wise interest received and interest paid have been filed before us. For Assessment Year 2013-14, we find that the assessee has charged the interest in the range of 6% to 18% more specifically interest @18% per annum has been charged from Kalani

Industries Pvt Ltd, 6% per annum has been charged from P.S. Kalani. In the details of interest paid we observe that on the unsecured loans the rate of interest paid is ranging from 9% to 15%. Interest ranging from 12% to 15% has been paid to the bank. Revenue has not doubted the genuineness of all other interest expenses and interest receipts during the year except those disputed. No adversity have been found in the books of accounts regularly maintained by the assessee. Assessee also enjoys over draft facility from Bank of Baroda and also on 31.3.2014 the outstanding balance of over draft of Bank of Baroda was Rs.2,02,07,718/-.

11. *The above stated facts clearly demonstrates that assessee is regularly carrying out the business of money lending and for business and commercial expediency rate of interest paid and received varies from case to case. The assessee is very much independent to carry out its business activity in the best of her interest. Charging of interest at high rate and low rate depends on various circumstances. If the funds are idle and due to pre commitments the interest on unsecured loans are to be paid consistently then even if interest rate is low and if the person finds that the investment is safe, one can very well go for receiving lower interest rate. It is a well-known fact that in banking industries also per annum rates of interest on Fixed Deposit normally range between 5% to 7% whereas for the cash credit loans and other business loans the banks are charging much higher interest. There cannot be a straight jacket formula that if unsecured loan is taken @12% per annum one will have to charge interest more than 12% on loan given. The same may or may not happen. It is up to the businessmen to take a wise decision at the given point of time and the risk involved in giving loan on interest. In finance business, one is concerned to earn profits but major concern is of receiving the principle amount back as and when due to be received.*

12. *In the instant case the transactions of taking money on loan and giving them as advance or loan for interest is being carried out regularly round the year. It shows that interest paid on secured and unsecured loan is wholly and exclusively for the business purpose of earning income from loans and advances.*

13. *The allowability of interest paid on borrowed capital where interest bearing funds have been advanced interest free to the sister concern was deliberated upon by the Hon'ble Supreme Court in S.A. Builders (supra) 288 ITR 1 (SC). The ratio laid down by the Hon'ble Supreme Court is as under:-*

“ In order to decide whether interest on funds borrowed by the assessee to give an interest free loan to a sister concern (e.g., a subsidiary of the assessee) should be allowed as a deduction under section 36(1)(iii) of the Income Tax Act, 1961, one has to enquire whether the loan was given by the assessee as a measure of commercial expediency. The

expression “commercial expediency” is one of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation, but yet it is allowable as business expenditure if it was incurred on grounds of commercial expediency.”

14. *Examining the instant case and on the facts of above judgment we are of the view that firstly there is a clear nexus of interest paid against the income received during the year, the transactions carried out by the assessee are for the commercial expediency and for this purpose the rate of interest paid and received by the assessee are varying from case to case which is duly evident from the records placed before us and the audited financial statements. Under given facts and circumstances of the case the action of Ld. A.O was not justified in taking up few out of many advances given by the assessee to arbitrarily levy interest rate on loan given at an agreed rate of interest which may be lower than the interest rate charged from other persons or no interest is charged for commercial expediency purposes. We thus set aside the finding of Ld. CIA(A) and delete the disallowance of interest at Rs.9,22,643/- and Rs.11,20,776/- made for Assessment Years 2013-14 & 2014-15 respectively. The common issue raised before us is decided in favour of the assessee. Effective grounds raised in these two appeals are allowed*

7. Ongoing through the above finding we observe that the same is squarely applicable on the issues raised in the instant appeals. Ld. DR failed to controvert and distinguish the facts. We, thus, decide to take a consistent view, since the facts and issue are identical, set aside the finding of Ld. CIT(A) and delete the disallowance of interest expense at Rs.11,73,666/- in case of Smt. Manisha Kalani and Rs.7,36,649/- in case of Smt. Namita Kalani. All the effective grounds raised in the instant appeals stands

allowed. Other grounds being general in nature which needs no adjudication.

8. In the result, both the appeals at the instance of assessee(s) in ITANo.162/Ind/2020 & ITANo.163/Ind/2020 are allowed.

Order was pronounced as per Rule 34 of I.T.A.T., Rules 1963 on 20.07.2021.

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 20/07/2021

Patel/PS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Assistant Registrar, Indore