

आयकर अपीलीय अधिकरण  
मुंबई पीठ "एस एम सी" , मुंबई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
आअसं. 291/मुं/2020 (नि.व.2011-12)  
ITA NO.291/MUM/2020 (A.Y.2011-12)

Ria Sachinkumar Surya  
7-C, Pooja Villa,  
Mini Land Tank Road,  
Bhandup (W), Mumbai-400078.

PAN: **AMHPS3464K**

..... अपीलार्थी /Appellant

बनाम Vs.

ITO, 299(3)(2),  
C-10/307, Kautilya Bhavan,  
Bandra Kurla Complex,  
Mumbai-400051.

..... प्रतिवादी /Respondent

अपीलार्थी द्वारा/ Appellant by : Sh. Jayant Bhatt

प्रतिवादी द्वारा/Respondent by : Sh. Sanjay J. Sethi

सुनवाई की तिथि/ Date of hearing : 29/07/2021

घोषणा की तिथि/ Date of pronouncement : 10/08/2021

आदेश/ ORDER

**PER VIKAS AWASTHY, J.M:**

This appeal by the assessee is directed against an ex-parte order of the Commissioner of Income Tax (Appeals)-40, Mumbai [hereinafter referred to as 'the CIT(A)'] dated 22.11.2019 for the Assessment Year (AY) 2011-12.

2. Sh. Jayant Bhatt appearing on behalf of the assessee narrating the facts of the case submitted, that the assessee had taken a loan of Rs. 30,00,000/- from two parties i.e. M/s Parvati Exports Rs. 20,00,000/- and M/s Astha Impex

Rs. 10,00,000/- in Financial Year (FY) 2009-10. During assessment proceedings for AY 2010-11, the Assessing Officer (AO) held the aforesaid loan as bogus and made addition of the entire unsecured loan amount u/s 68 of the Income Tax Act, 1961 [hereinafter referred to as 'the Act']. The AO further disallowed interest expenditure claimed by the assessee on the aforesaid loan. The assessee carried the issue in appeal before the CIT(A). The CIT(A) vide order dated 11.12.2019 after examining the facts of the case and documents on record reversed the findings of AO and deleted the addition on merits. Thereafter, in subsequent AY i.e. AY 2012-13, the AO had again disallowed interest payment by the assessee to M/s Astha Impex and M/s Parvati Exports. In First Appellate proceedings for A.Y. 2012-13, the CIT(A) observed that since the principle addition was deleted in AY 2010-11, the consequential disallowance of interest would not survive and hence, deleted the disallowance of interest. The Id. AR pointed that the Revenue has not filed any appeal against the order of CIT(A) for AY 2010-11 & 2011-12.

In the impugned AY the assessee's claim of interest expenditure paid to M/s Astha Impex Rs. 90,000/- and M/s Parvati Exports Rs. 80,000/- was disallowed by the AO. The CIT(A) in ex-parte proceedings upheld disallowance of interest. The Id. Authorized Representative (AR) submitted that since, the Revenue has accepted loan as genuine, there is no reason to disallow payment of interest on the said loan. The Id. AR furnished a copy of the order of CIT(A) dated 11.12.2019 for AY 2010-11 and the order of even date for AY 2012-13.

3. Sh. Sanjay J. Sethi representing the Department vehemently supporting the impugned order submitted that parties from whom, the assessee had

taken loan belong to Bhanwarlal Jain group. During search action on Bhanwarlal Jain group, statements of Sh. Bhanwarlal Jain and his sons were recorded, wherein they admitted that they have floated several concerns solely for the purpose of providing accommodation entries on commission basis and no actual business was carried out by the benami concerns belonging to Bhanwarlal Jain group. The DR asserted that the assessee is one of the beneficiaries of accommodation entries provided by the concerns floated by Bhanwarlal Jain group. The DR further submitted that he is trying to ascertain from the Department status of appeals, if any filed against the order of CIT(A) in AY 2010-11 and 2012-13. However, due to restructuring of the Department he has not been able to gather the information. The Id. DR sought some more time to collect information regarding filing of any appeal by the Department in assessee's case for preceding and succeeding AYs.

4. Both sides heard, orders of authorities below examined. The solitary issue raised by the assessee in appeal is against confirming of disallowance of interest Rs. 2,70,000/- by the CIT(A) in an ex-parte proceedings. The assessee had taken unsecured loan of Rs. 30,00,000/- from two concerns i.e. Ashtha Impex and Parvati Exports during the period relevant to the AY 2010-11. During assessment proceedings for AY 2010-11, the AO held the aforesaid loan transactions as non-genuine and made addition of the aforesaid amount. Further, the AO disallowed interest expenditure claimed by the assessee on the aforesaid loans. In First Appellate proceedings, the CIT(A) after examining the facts and the documents furnished by the assessee held the loan transaction to be genuine and also allowed the interest expenditure claimed by the assessee on the said loan. In the subsequent AY i.e. AY 2012-13, the AO

had again disallowed interest claimed by the assessee on the aforesaid loans. In First Appellate proceedings, the CIT(A) deleted the disallowance holding that once the loan transaction is found to be genuine, there would be no disallowance of consequential interest.

5. I find merit in the submissions made by Id. AR of the assessee. Once the Revenue has accepted the loan transaction to be genuine, there is no reason to disallow interest expenditure claimed on the said loan in subsequent A.Y.

6. The DR had sought time to ascertain, if any, appeal is filed by the Revenue against the order of CIT(A) in AYs 2010-11 and 2012-13. A perusal of case file shows that the DR has sought time on three occasions in the past to seek the same information, however, the information is not forthcoming. The appeal cannot be allowed to languish merely for collecting the information. Liberty is granted to the Revenue to approach the Tribunal to revive the appeal in case, the Department has filed appeal against the order of CIT(A) for AY 2010-11 and 2012-13 on the issue in hand and the same has been decided by the Tribunal in favour of the Revenue.

7. In the result, impugned order is set-aside and the appeal of assessee is allowed.

Order pronounced in the open court on **Tuesday**, the **10<sup>th</sup>** day of August, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 10/08/2021

SK, PS

**प्रतिलिपि अग्रेषित Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.
3. आयकर आयुक्त(अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाइल / Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)

**ITAT, Mumbai**