

आयकर अपीलिय अधिकरण "A" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एम. बालगणेश, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, VP AND SRI M. BALAGANESH, AM

आयकर अपील सं./ ITA No. 6558/Mum/2018

(निर्धारण वर्ष / Assessment Year 2013-14)

M/s Abhyankar Brothers 216, Sant Tukaram Road, Carnac Bunder, Mumbai-400 009	बनाम/ Vs.	The Commissioner of Income Tax, Circle-55 5 th Floor, Earnest House, NCPA Marg, Mumbai-400 021
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAFA2467K		

अपीलार्थी की ओर से/ Appellant by	:	Ms. Chaitee Lodhe, AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri. Brajendra Kumar, DR

सुनवाई की तारीख / Date of hearing:	29.06.2021
घोषणा की तारीख / Date of pronouncement:	31.08.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /

PER MAHAVIR SINGH, VP:

This appeal of assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-55 Mumbai, [in short CIT(A)], in appeal No. CIT(A)-55/ACIT-17(1)/IT-431/17-18 dated 28.08.2018. The assessment was framed by the Asst. Commissioner of Income Tax, Circle 17(1), Mumbai (in short ACIT/ AO) for the A.Y. 2013-14 vide order dated 20.03.2016 under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. The first issue in this appeal of assessee is against the order of CIT(A) confirming the action of the Assessing Officer in disallowing interest under section 37 of the Act by holding the same not for the

purpose of business. For this, the assessee has raised the following grounds: -

"1. The learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of interest of ₹39,41,684/- without appreciating that the interest incurred was for the purpose of business and therefore allowable.

2. The learned Commissioner of Income Tax (Appeals) did not appreciate the explanation placed on record, all the details regarding to the advances which clearly established that the advances were not for the purpose of business."

3. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted from the assessment order that the assessee has claimed interest expenses amounting to ₹46,88,977/- paid on the unsecured loans and advances but at the same time has given interest free loans to various parties from which no interest income was disclosed. The Assessing Officer accordingly made a disallowance on total interest free loans and advances of ₹4,07,28,751/- and thereby disallowed a sum of ₹ 39,41,684. Aggrieved, assessee preferred the appeal before CIT(A), who also confirmed the action of the Assessing Officer. Aggrieved, assessee is in appeal before Tribunal.

4. Before us, the learned Counsel for the assessee filed the details of advances granted by the assessee to various parties on 31.03.2013, the details are as under:-

SN	Name of the party	Amount
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1.	Matoshree Infrastructure Pvt. Ltd.	₹3,34,68,000/-
2.	Indo Canada JVB	₹49,29,668/-
3.	VAT	₹2,55,054/-
4.	Others (18 parties)	₹20,76,032/-
	Total (considered by AO for computing disallowance)	₹4,07,28,751/-
	Add: Advance given to partner	₹43,74,706/-
	Total advances as per balance sheet	₹4,51,03,457/-

5. We noted that the interest expenses incurred by the assessee was to the tune of ₹59,50,174/- during the year on unsecured loans obtained for the purposes of the business. But the Assessing Officer made a proportionate disallowance interest to the extent of ₹39,41,684/- on account of the above advances as under:-

Name of the party		Amount
Total Interest Expenses	(A)	₹59,50,174
Total Loans and Advances (Liability)	(B)	₹6,14,82,123
Interest free advances (Asset)	(C)	₹4,07,28,751
Disallowance	(A/B*C)	₹39,41,684

6. Now before us, the assessee gave explanation in respect to the advances given to Matoshree Infrastructure Pvt. Ltd. of ₹3,34,68,000/-, advance of ₹49,29,668/- to Indo Canada JVB and VAT refund due to ₹2,55,054/-. The assessee without prejudice to the arguments on the merits stated that disallowance be restricted to ₹2,00,916/-. For this, assessee has given the computation as under: -

Particulars		Amount
Total Interest Expenses	(A)	₹59,50,174
Total Loans and Advances (Liability)	(B)	₹6,14,82,123
Advances treated as granted for non-business purposes (₹4.07 crores -3.34 crores – 0.49 crores -0.025)	(C)	₹20,76,032
Disallowance	(A/B*C)	₹2,00,916

7. Reason given by assessee was that advances to Matoshree Infrastructure Pvt. Ltd. of ₹3,34,60,000/- was in pursuant to the

agreement entered into with Matoshree Infrastructure Pvt. Ltd. and the assessee that the assessee would provide finance for development of certain property and in consideration would be entitled to a share of profit on the said project. Since, there was business expediency, in this case no interest was charged on the said advances. As regards to the advance to Indo Canada JVB, it was given for import of material and the assessee could not recover the same from the party because the party defaulted in supply of material and advances remain as it is. It was contended that this was during the course of normal business. As regards of VAT refund, this cannot give any interest and hence interest has not charged because it is a statutory deposit. These assertions were not controverted by the learned Sr. Departmental Representative. We have gone through the above assertions which remain uncontroverted, we find force in the arguments of the learned counsel for the assessee and the facts advanced for the purpose of business except the advances to the other parties amounting to ₹20,76,032/- on which interest be disallowed at ₹2,00,916/-. We direct the Assessing Officer accordingly. This issue of assessee's appeal is partly allowed.

8. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the Assessing Officer in making addition of ₹17,00,614/- being outstanding creditors under section 41(1) of the Act. For this, assessee has raised the following ground No.3 and 4:

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"3. The learned Commissioner of Income Tax (Appeals) erred in confirming the addition of ₹17,00,614 u/s 41(1) despite the fact that, the said creditors were outstanding as at the date of

balance sheet and had not been written back and consequently the provision of section 41(1) did not apply.

4. The learned Commissioner of Income Tax (Appeals) erred in not appreciating that the creditors were genuine, and therefore the action of the Assessing Officer was totally unwarranted."

9. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that it is neither disputed by the CIT(A) nor by the Assessing Officer that amounts were outstanding for the following creditors in the balance sheet as on 31.03.2013.

Name of the party	Amount
M/s Aadhar Steel Traders	19,824
M/s Abhayankar Commodities P. Ltd.	5,300
M/s Clarion International	8,38,999
M/s Sonas Enterprises	49,394
M/s Universal Resources & Traders	37,097
M/s Vijayraj Global Trade	7,50,000

10. The Assessing Officer has made addition on account of cessation of liability under section 41(1) of the Act. We noted that these amounts are outstanding in the balance sheet as on the date and assessee has not taken any benefit and once the assessee has not obtained any benefit by virtue of remission or cessation is sine qua non for application of section 41(1) of the Act. Here, the liability is very much outstanding hence, the provisions of section 41(1) of the Act will not apply. We are taken help from the judicial pronouncement of the Hon'ble Apex Court in the case of CIT vs. Sugauli Sugar Works (P) Ltd. (1999) 236 ITR 518 (SC) and U.O.I. vs J.K. Synthetics Ltd. (199 ITR 14) (SC). We are of the view that once

there is no write back of the liability payable to creditors and which is duly disclosed in the balance sheet as on 31.03.2013, the liability has not ceased to exist within the meaning of section 41(1) of the Act. Hence, the addition made by Assessing Officer and confirmed by CIT(A) deserves to be deleted, we order accordingly. The appeal of the assessee is partly allowed.

11. In the Result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 31.08.2021.

Sd/-

(एम. बालगणेश / M. BALAGANESH)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated:31.08.2021

सुदीप सरकार, व. निजी सचिव/ Sudip Sarkar, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार/Asstt. Registrar/ व. निजी सचिव/Sr. Private Secretary/

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai