

**IN THE INCOME TAX APPELLATE TRIBUNAL, JODHPUR BENCH,
JODHPUR
BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER AND
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**

**ITA No. 151/JODH/2017
(Assessment Year 2013-14)**

Hanuman Prasad Goyal, Prop.-Goyal Enterprises, Dhan Mandi, Gharsana.	Vs.	I.T.O. Ward-Suratgarh.
PAN No. ABVPG 7484 Q		

Assessee by	Shri Virendra Jain, Adv.
Revenue by	Miss. Kajal Singh, JCIT-DR
Date of Hearing	12/08/2021
Date of Pronouncement	06/09/2021

ORDER

PER: SANDEEP GOSAIN, J.M.

The present appeal has been filed by the assessee against the order passed by the Id. CIT(A), Bikaner dated 30/12/2016 for the A.Y. 2013-14, wherein following grounds have been taken by the assessee:

- “1. On the facts and circumstances of the case, Id. CIT(A) has erred in confirming the disallowance made by A.O. on account of interest paid to creditors Rs. 8,89,780/-. It was having no force or solid base hence it should be deleted.
2. On the facts and circumstances of the case, Id. AO has erred in charging interest U/s 234B and 234C of the IT Act, 1961.
3. The appellant may please be permitted to raise any additional or alternative grounds at or before hearing.”

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. The brief facts of the case are that the assessee is an individual and prop. of M/S Goyal Enterprises Gharsana, who indulged in business of

grains gaur and agriculture products. He filed its return of income on 30/09/2013 declaring total income of Rs. 3,54,590/-. The A.O. completed the assessment u/s 143(3) of the Income Tax Act, 1961 (in short, the Act) on 11/03/2016 by making following additions:-

S.N.	Particular	Addition Amount	Total Amount
	Returned Income		3,54,390
1.	Trading Addition	49,47,823	
2.	Interest Disallowed	8,89,780	
3.	Disallowed Expenses	62,996	
4.	Undeclared Interest	21,913	
5.	Addition on A/C of House Hold Expenses	1,05,979	60,28,491
	TOTAL ASSESSED INCOME		63,83,081

4. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A), who after considering the submissions of the parties and material placed on record allowed the appeal in part and only confirmed the disallowance of interest at Rs. 8,89,780/-.

5. Being aggrieved by the order of the Id. CIT(A), the assessee is in further appeal before the ITAT on the grounds mentioned above.

6. The solitary ground raised by the assessee relates to challenging the order of the Id. CIT(A) in confirming the addition made on account of disallowance of interest of Rs. 8,89,780/- and added the same in the income of the assessee. In this regard, the Id AR appearing on behalf of the

assessee has reiterated the same arguments as were raised before the Id. CIT(A) and also relied on the written submissions filed before the Bench and the same is reproduced below:

"Ld. CIT(A) has erred in confirming the addition made on a/c of disallowing interest Rs. 8,89,780/- and adding it into income. He has made this addition for not charging interest on advances given by the assessee.

Ld. AO has made addition Rs. 8,89,780/- on account of not charging interest on the debtors (AO's order page 10).

Ld. AO has erred in disallowing interest Rs. 8,89,780/- and adding it into income. He has made this addition for not charging interest on debtors. It is submitted that none of these parties were covered u/s 402(A)(b) of the IT Act 1961. All the parties to whom advances are given is purely related to our business. All the parties mentioned in the AO order page no. 10 to whom advanced are provided comes under the ambit of commercial expediency. The above has been provided for augments the business prospects. All the parties are our regular dealer of sale and purchases. Neither any interest was given by them nor received by me therefore why would I charge interest on these parties.

No independent enquiry was made. The AO did not make any inquiry for not charging the interest. He was free to make summons to the parties of the appellant. The appellant has not received any amount yet up to today. He relied upon the decision of Hon'ble Supreme courts in the case of Highways Construction Co. Pvt. Ltd. v CIT [1993] 199 ITR 702, wherein this court held (page 708) :

He also relied upon the following decision of Hon'ble High Court Delhi in the case of M/S SHIVNANDAN BUILDCON PVT. LTD Vs. THE COMMISSIONER OF INCOME TAX & ANR. Wherein this order it was held that the addition on account of a notional income on advances is deleted.

He also relied upon the following decision in B And A Plantations And Industries Ltd Vs Commissioner of Income-Tax (Guwahati High Court) (2000) 242 ITR 022 (Gau), Wherein this judgment it was held that addition on account of notional interest should be made.

Here I would like to draw your attention towards the sundry creditors list of the year, where we have not given interest to our various creditors of Rs. 1,41,01,952/- so it may be taken in notes that the same money is advanced to those party mentioned by AO.

The amount outstanding from the trade debtors cannot be held as amounts given on loan. No materials have been brought by the Assessing Officer to impute that the delay in receiving the outstanding balance amounts from the four debtors parties was on account of deliberate act of the appellant. The appellant's case is well supported by the following decisions:

(i) D & H Secheron Electrodes P. Ltd v Commissioner of Income tax (1983) 35 CTR (MP) 41 High Court of Madhya Pradesh.

(ii) Commissioner of Income Tax v Premier Auto Finance P. Ltd (1980) 18 CTR (Del) 295 High Court of Delhi.

(iii) Commissioner of Income Tax v Indo Kopp Ltd (2008) 167 Taxman 172 (Del) High Court of Delhi.

iv) Commissioner of Income Tax v Ram Lal Rajaram (1999) 157 CTR (All) 119 High Court of Allahabad

v) Madhav Prasad Jatia v Commissioner of Income Tax (1979) 10 CTR (SC) 375 Supreme Court of India.

The Bombay high Court in the case of CIT v Bombay samachar Ltd (74 ITR 723) has held that as long as the borrowed funds have been utilized in the business, the interest payable cannot be disallowed on the grounds that interest has not been charged on the amounts outstanding in connection with the business transaction.

So in view of above kindly delete the addition on a/c of interest not charged at Rs. 8,89,780/- and allow the grounds of appeal."

7. On the other hand, the Id. DR has vehemently supported the orders of the authorities below.

8. Having considered the rival contentions and carefully perused the material placed on record. As per the facts of the present case, we found that an addition of Rs. 8,89,780/- was confirmed by the Id. CIT(A) on account of non-charging of interest on the debtors. Whereas on the contrary, it was submitted by the assessee from the very beginning that none of the parties to whom amount was advanced was covered u/s 402(A)(b) of the Act and all the parties were transacted within the normal course of business. It was further submitted that the amount provided by the assessee to the said parties comes under the ambit of commercial expediency. The said amount was provided by the assessee to the parties for augmenting the business prospects and all the parties listed in the order of the AO. are dealing in regular sale and purchases with the assessee and none of those parties are in any way related to the assessee. In order to justify the payment to the said parties, it was specifically submitted by the assessee that since there was decrease in the price of guar, therefore, the orders which were placed, could not be finalized and the advances given for procuring the stock were thus received back with no interest and since these were not in the nature of interest free advances provided but for the sake of business

augmentation, therefore, by no stretch of imagination, the A.O. could have made additions on account of non-charging of interest from the said parties. It was further pointed out that the A.O. had not carried out any independent enquiry as to whether any amount on account of interest was ever paid by the assessee. The assessee also relied on the decision of the Hon'ble Supreme Court in the case of **Highways Construction Co. Pvt. Ltd. Vs CIT (1993) 199 ITR 702** wherein it was held that there is no provision in the Income Tax Act which empowers to include in the income, that interest which was not due or collected/received by the assessee. Apart from this, the assessee also relied upon the decision in the case of B And A Plantations And Industries Ltd Vs CIT (Guwahati High Court) (2000) 242 ITR 022 (Gau), D & H Secheron Electrodes P. Ltd v CIT (1983) 35 CTR (MP) 41, CIT v Premier Auto Finance P. Ltd (1980) 18 CTR (Del) 295, CIT v Indo Kopp Ltd (2008) 167 Taxman 172 (Del), CIT v Ram Lal Rajaram (1999) 157 CTR (All) 119, Madhav Prasad Jatia v CIT (1979) 10 CTR (SC) 375 and CIT v Bombay samachar Ltd (74 ITR 723) (Bom).

9. After careful analysis of the orders passed by the authorities below and the arguments advanced by the assessee, we are of the view that while making the additions, the A.O. had merely relied upon the decision in the case of S.A. Builders Ltd. Vs CIT (SC) 288 ITR 1 and Punjab Stainless Steel Industries Vs CIT 324 ITR 396 (Del). However, the facts and the pari materia contained in that judgment is not applicable to the

facts of the present case. In these very cases, it was categorically held that *"once it is borne out from the record that the assessee had borrowed certain funds on which liability to pay tax is being incurred and on the other hand, certain amounts had been advanced to sister concerns or others without carrying any interest and without any business purpose, the interest to the extent the advance had been made without carrying any interest is to be disallowed under Section 36(1)(iii) of the Act."* However, in the present case, no amount has been advanced to the sister concern or others without any business purposes. The A.O. has not demonstrated that the amount paid by the assessee to the parties was without any 'business expediency' moreover, no independent enquiry has ever been conducted by the A.O. from the said parties. We found support from the decision of the Hon'ble Supreme Court in the case of **Highways Construction Co. P. Ltd. Vs CIT** (supra) wherein it was categorically held that the A.O. has to bring on record any interest actually been collected or received and the collection of the interest was reflected in the accounts. In the present case, there is no such finding on record and even otherwise the findings of the Income tax officer are only to the extent that the assessee ought to have collected interest. In other words, the view of the Income tax officer which has been accepted by the CIT was that the assessee, as a good business concern, should not have granted interest free advances to the respective parties. From records, the assessee had not received any interest then we fail to

understand as to how the Income tax authorities can fix a notional interest as due, or collected by the assessee. Our attention has not been invited to any of the provisions of the Act empowering the Income tax authorities to include in the income, interest which has not been due or collected/received at any stage by the assessee. In view of the above facts and circumstances and while relying upon the decision of the Hon'ble Supreme Court in the case of **Highways Construction Co. P. Ltd. Vs CIT** (supra) we are of the view that the amount outstanding from the trade debtors cannot be held as amount given on loan. No material has been placed on record by the A.O. to impute that the delay in receiving the outstanding balance amounts from the debtor parties was on account of deliberate act of the assessee. Therefore, in such circumstances, we are of the view that no addition could have been made by the A.O. on account of non-charging of interest by the assessee, hence, we direct to delete the addition.

10. In the result, this appeal of the assessee stands allowed.

Sd/-
(VIKRAM SINGH YADAV)
ACCOUNTANT MEMBER

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Jodhpur
Dated 06/09/2021

*Ranjan

Copy to:

1. The Appellant
2. The Respondent
3. The CIT

4. The CIT (A)
5. The DR
6. Guard File

Assistant Registrar
Jodhpur Bench