

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI MANISH BORAD (ACCOUNTANT MEMBER)**

**ITA No. 5996/MUM/2019
Assessment Year: 2013-14**

Bhavita K. Shah,
703-704, Sheetalnath
Building, Sudha Park,
Ghatkopar East, Mumbai-
400077.

PAN No. AAQPS 0289 P
Appellant

ACIT-4(3)(2),
Vs. Mumbai.

Respondent

Assessee by	:	Mr. Mehul Shah, AR
Revenue by	:	Ms. Smita Verma, DR
Date of Hearing	:	12/08/2021
Date of pronouncement	:	31/08/2021

ORDER

PER MANISH BORAD, A.M.

The present appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-9, Mumbai [in short 'CIT(A)'] for the assessment year 2013-14 dated 26.08.2019 and arises out of assessment completed u/s 143(3) of the Income Tax Act, 1961 (in short the Act).

2. The grounds of appeal filed by the revenue read as under :

1. *The Ld. Assessing Officer erred in disallowing interest paid on loan taken for Rs.13,49,531/-. The same interest is actually paid on borrowings against interest income earned by the appellant.*
2. *The Ld. Assessing Officer erred in disallowing unsecured loan of Rs.5,00,000/-, loan confirmation and relevant details were submitted during the course of assessment.*

3. The brief facts of the case are that the assessee is an individual. She e-filed her e-return of income for AY 2013-14 on 23.07.2013 declaring income at Rs.33,59,050/-. Case selected for scrutiny through CASS. Notices issued u/s 143(2) and 142(1) of the Act were duly served upon the assessee. On examining the details, the Ld. AO was of the view that assessee's claim for expenditure of Rs.1,08,105/- claimed against the commission income of Rs.1,65,000/- is not allowable as these are general in nature and not supported by any evidence. Ld. AO on examining the interest expenditure claimed u/s 57(iii) of the Act was not satisfied with the submissions made by the assessee and disallowed the expenditure at Rs.13,49,531/-. Ld. AO on examining the unsecured loan of Rs.5,00,000/- taken from Vanleela Pravin Mehta was not satisfied with the creditworthiness of the cash creditor as she has not filed her income tax return for the year in which loan was given. He accordingly, made the addition u/s 68 of the Act at Rs.5,00,000/-

for unexplained cash credit. Along with other minor additions, the Ld. AO assessed the income of Rs.53,16,720/-.

4. Aggrieved the assessee preferred appeal before Ld. CIT(A) against the disallowance of indirect expense of Rs.1,08,105/- disallowance of interest expenditure of Rs.13,49,531/- and addition u/s 68 of the Act for unexplained loan of Rs.5,00,000/- but failed to succeed on any of the ground as the view taken by the Ld. Assessing Officer was confirmed after considering the submissions of the assessee as well as the remand report of the Assessing Officer dated 26.06.2019.

5. Aggrieved assessee is now in appeal before this Tribunal Ld. counsel for the assessee apart from referring to the submissions made before both the lower authorities also took us through paper book filed on 16.12.2020 from page 12 para 74 containing various documents as well as the decisions relied by him.

6. Per contra Ld. DR vehemently argued supporting the orders of both the lower authorities and opposed the submissions made by the Ld. counsel of the assessee.

7. We have heard the rival submissions perused the material placed on record and carefully gone through documents placed in paper book. The assessee has raised two ground in the appeal filed in Form 36 and thereafter an additional ground has been raised on 15.04.2021.

8. As regards ground No. 1 the assessee has challenged the finding of Ld. CIT(A) confirming the disallowance of interest paid on loan taken at Rs.13,49,531/-. We observe that this claim has been made under the head 'income from other sources'. In the computation of income placed at page 35 we find that the interest received during the year includes the interest income from Sneha Medicare Pvt. Ltd. Against this interest income, the interest expenditure at Rs.13,49,531/- is claimed stating it to be the interest paid on the loan taken for the purpose of giving it as loan to Sneha Medicare Pvt. Ltd. We find that in the ledger account of Sneha Medicare Pvt. Ltd. in the books of assessee is placed at page 29 of the paper book, there is an opening balance of loan given to Sneha Medicare Pvt. Ltd. at Rs.1,60,00,000/-. It show that the loan has been given in the preceding years. During the year there are few transactions of

further advancing loan amounting to Rs.25,50,000/- and some amount has also been received during the year. The assessee has filed chart at page 31 and 33 showing complete details of funds received during the year and their movement. Ld. CIT(A) has also appreciated the fact that during the year the appellant has paid interest to 41 parties out of which 34 were paid for unsecured loan taken in preceding years and in 7 cases on fresh loan received during the year and also stated that in 13 cases the loan was repaid during the year. Thus looking to the overall details filed before us we find that major amount of loans were taken in the preceding years and amount advanced to M/s Sneha Medicare Pvt. Ltd. The assessee is consistently claiming interest expenditure against the interest income. There is a positive interest income at the end of the year. Nexus of amount received during the year to the amount advanced to Sneha Medicare Pvt. Ltd. is also appearing from record. We therefore, under the given facts and circumstances of the case and the details filed before us including the ledger account of Sneha Medicare Pvt. Ltd. complete details of unsecured loans taken by the assessee including the details of opening balance, addition, repayment, interest and rate of interest and also the date-wise

details of interest received during the year and also considering the fact that no abnormal rate of interest has been paid on the loans taken during the year and thus are inclined to hold that the alleged claim of interest expenditure of Rs.13,49,531/- has nexus to the interest income earned from Sneha Medicare Pvt. Ltd. and thus deserves to be allowed u/s 57(iii) of the Act. Accordingly, addition of Rs.13,49,531/- is deleted and ground No. 1 raised by the assessee is allowed.

9. As regards ground No. 2 raised by the assessee challenging the addition for unexplained cash credit u/s 68 of the Act at Rs.5,00,000/-, on perusal of records we find that the assessee received loan of Rs.5,00,000/- from Vanleela Mehta. She is a senior citizen and has not filed return of income for the year under appeal and Ld. counsel for the assessee has stated that she has not having taxable income. In the past she was filed the return of income. Her PAN no. and address were provided before the lower authorities. The Bank statement has also been filed. Perusal of bank statement shows that she was having sufficient bank balance and there was no immediate cash deposit in the bank account before the issuance

of cheque to the assessee. Immediately before the loan was given to assessee there were credits in the bank account of Vanleela P. Mehta through transfers from other sources at Rs.2,50,000/- on 31.03.2012 Rs.85,000/- on 16.05.2012 and Rs.1,55,000/- on 10.05.2012. The flow of transactions in the bank statement shows that there are regular transaction of debit and credit. Vanleela P. Mehta has filed the return of income for AY 2014-15 and 2018-19. The confirmation of accounts has also been filed which contains the complete address and PAN No. of the cash creditor. Non-filing of return in a particular year cannot be held to be a sole basis to treat the cash credit as unexplained. All these documents filed by the assessee stand un-rebutted by the Departmental Representative as no contrary material is placed before us. Also no independent inquiry has been conducted by both the lower authorities to controvert the submissions made by the assessee at the time of assessment proceedings and appellate proceedings. We therefore, in the given facts and circumstances of the case and considering the documents filed before us including copy of ledger account, bank statements, confirmation of account, copy of the PAN and Address, are of the considered view that the assessee has been successful to

prove the identity and credit worthiness of Vanleela P. Mehta and genuineness of the alleged transaction. We thus delete the addition made u/s 68 of the Act at Rs.5,00,000/- and allow the ground No. 2 raised by the assessee.

10. As regards, the additional ground taken by the assessee challenging the disallowance of business expenditure at Rs.1,08,105/- claimed to have been incurred wholly and exclusively for the purpose of business, we find that the alleged disallowance made by the Ld. Assessing Officer has not been made on the basis of any irregularity found in the documents and books maintained. The expenditure claimed by the assessee are normal business expenditure. Though they have been incurred in cash but they are incidental for earning commission income. The total expenditures of Rs.1,08,105/- has been claimed against the commission income of Rs.1,65,000/- leaving behind the positive income of Rs.68,895/-. The alleged disallowance *prima facie* seems to be an ad-hoc disallowance which in our considered view was not called for. We therefore find merit in the contentions made by the Ld. counsel for the assessee and accordingly delete the disallowance of business

expenses of Rs.1,08,105/-. Accordingly, the additional ground raised by the assessee is allowed.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 31/08/2021.

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

Mumbai;
Dated: 31/08/2021.
Rahul Sharma, Sr. P.S.

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,

(Dy./Assistant Registrar)
ITAT, Mumbai