

**आयकर अपीलीय अधिकरण “SMC” न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI**

श्री महावीर सिंह, उपाध्यक्ष के समक्ष ।

BEFORE SRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ ITA No. 3770/Mum/2019

(निर्धारण वर्ष / Assessment Year 2013-14)

Shri Rajeev C Chitalia 504, Deepak Residency, Lajpatrai Road, Vile Parle (W), Mumbai-400 056	Vs.	The Income Tax Officer, Ward, 25(3)(3), Kautilya Bldg, BKC, Maharashtra-400 051
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
<b>स्थायी लेखा सं./PAN No. ACUPC0206G</b>		

अपीलार्थी की ओर से / <b>Appellant by</b>	:	None
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	Smt. Smita Verma, DR

सुनवाई की तारीख / <b>Date of hearing:</b>	27.09.2021
घोषणा की तारीख / <b>Date of pronouncement :</b>	27.09.2021

**आदेश / ORDER**

महावीर सिंह, उपाध्यक्ष के द्वारा /  
**PER MAHAVIR SINGH, VP:**

This appeal of the assessee is arising out of order of the Commissioner of Income Tax (Appeals)-53, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-53/IT-166/ITO-25(3)(3)/2018-19 vide dated 05.04.2019. The Assessment was framed by the Income Tax Officer, Ward-25(3)(3) Mumbai (in short ITO/ AO) for the A.Y. 2013-14 vide order dated 14.03.2016 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. When this matter was called up for hearing, none was present from assessee's side and already this appeal was adjourned many times since 26.10.2020. Hence, this appeal



was taken up for hearing and learned Sr. Departmental Representative Smt. Smita Verma argued for the Revenue.

3. The first issue in this appeal of assessee is as regards to the order of CIT(A) confirming the addition of ₹1 lacs deposited in the bank account out of the withdrawals claimed by assessee.

4. I have heard the learned Sr. Departmental Representative and gone through the facts and circumstances of the case. The learned Sr. Departmental Representative Smt. Smita Verma first of all drew my attention to Para 7 of the Assessing Officer's order but it is noticed that the Assessing Officer has made same adhoc addition of ₹1 lacs as deposits made in bank account.

5. When it was pointed out to learned Sr. Departmental Representative in which bank and which deposit of ₹ 1 lac is added to the returned income, it is not at all deliberated in the order of the Assessing Officer. The relevant Para 7 of the Assessing Officer's order reads as under:-

*"7. On perusal of details it is noticed that the assessee has taken various amounts of ₹200/-, ₹300/-, ₹500/-, ₹100/-, ₹400/-, ₹700/- etc. in the Cash Book and claimed that these funds were used to make subsequent deposits in the bank accounts. However, such very small and frequent withdrawal are in nature of drawings. The AR of assessee has claimed that these were utilized for purpose of making deposits in bank account. The explanation of the assessee is duly considered but not found acceptable considering the frequency of withdrawals and amount of withdrawals. In view of the same the AR of the assessee was show caused vide order sheet noting dated*



*01.03.2016 as to why ad-hoc addition of rs.1,00,000/- should not be made to the total income. Date of compliance was 03.03.2016. However the assessee has not submitted any explanation on 03.03.2016 or till date. It shows that the assessee has nothing to offer in this regard. Hence, amount of ₹1,00,000/- is added to the total income of the assessee as income from other sources.”*

6. Even the order of CIT(A) does not signify any deposit of 1 lac in the bank account which is actually added by Assessing Officer, hence, I am of the view that once any particular deposit is not added, the addition cannot be sustained which is purely adhoc. Hence, I delete the addition and allow this issue of assessee's appeal

7. The next issue in this appeal of assessee is as regards to the order of CIT(A) disallowing loss arising from income from other sources to be set off against the income of business amounting to ₹5,49,142/-. The relevant ground raised by assessee reads as under:-

*“2. The addition confirm by the CIT appeal of ₹5,49,142/- under section 57 for the disallowance of loss from income from other source to be set of against the income from business should be deleted.”*

8. Brief facts are that the assessee has disclosed loss of ₹4,29,996/- under the head income from other sources, the loss arising from the claim of interest expenses of ₹7,29,443/- as against interest earned of ₹2,99,446/-. The Assessing Officer noted that the assessee could not establish any nexus with



respect to bank interest, HDFC FD interest, NSC interest and interest payment made. He also noted that the assessee has advanced non-interest bearing loans to some parties and hence, the same cannot be allowed. He noted that the interest offered by assessee from EEPL is amounting to ₹1,80,301/-. Thereby, the Assessing Officer disallowed the remaining amount of ₹5,49,142/-.

9. The CIT(A) has considered the issue but given finding that the claim of assessee that the investment is made out of assessee's own capital but did not furnish detail of sources of funds supported by bank statements, he confirmed the disallowance vide Para 6.3 as under:-

*"6.3. I have considered the submissions carefully. The appellant has submitted that Rs 55.10 lakhs is balance in partnership concerns on which no interest is earned. Further out of loans and advances of Rs 55.02 lakhs, Rs 44.82 lakhs is to M/s Electrofocus Electricals P. Ltd on which interest is charged @16% and the remaining advances are interest free. The borrowings are Rs 92.35 lakhs of which Rs 48.86 lakhs are interest free and on balance interest is paid at rates varying from 8.37% on car loan and 12 to 15% on loans. The interest paid is Rs 729,443/-. The interest earned is 2.40 lakhs. It is clear that the interest earned is either not @ 16% from M/s Electrofocus Electricals P. Ltd or the money was deployed interest re and carried interest only for a short period. The argument that the appellant has own capital cannot be given credence since there are fixed assets of Rs 89.50 lakhs and other investments of Rs 13 lakhs also which are financed from own capital. The appellant has not furnished details of source and deployment of funds*



*supported by bank statements. The argument that interest payment claimed under section 57 should be allowed under business income also cannot be accepted since the appellant has failed to show that the interest bearing borrowings were deployed for business. The disallowance of Rs. 5,49,142/- u/s 57 of the IT Act. Is upheld and ground of appeal no. 3 is dismissed.”*

10. When these facts were confronted to the learned SR. Departmental Representative, Smt. Smita Verma stated that since the details are not available, the matter needs verification and adjudication at the level of the Assessing Officer afresh. She stated that she has no objection in case matter is restored back to the file of the Assessing Officer. Hence, I set aside the orders of lower authorities and remand this issue back to the file of the Assessing Officer to find out how the assessee has invested from own capital and the details of sources. Accordingly, the Assessing Officer, after verifying all the details, will consider this issue afresh. The appeal of assessee on this issue is allowed for statistical purposes.

**11. In the result, the appeal of the assessee is allowed partly for statistical purposes.**

Order pronounced in the open court on 27.09.2021.

Sd/-  
(महावीर सिंह /MAHAVIR SINGH)  
(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 27.09.2021

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



ITA No. 3770/Mum/2019  
Shri Rajeev C Chitalia; AY 13-14

**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)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai