

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya, Accountant Member

I.T.A. No. 322/Mum/2020
(Assessment Year 2012-13)

Jayanth N. Sheth 26 Mandvi Chambers 184 Samuel Street Masjid Bunder, Mumbai-400 009 PAN : AADPS7502E (Appellant)	Vs.	ACIT, Circle-17(2) Room No.116, Kautilya Bhawan, 1 st Floor, G Block, BKC, Bandra(E) Mumbai-400 051 (Respondent)
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Assessee by	Shri Jayanth Sheth
Department by	Ms. Smita Verma
Date of Hearing	13.10.2021
Date of Pronouncement	16 .12.2021

O R D E R

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-28 dated 31.10.2019 and pertains to assessment year 2012-13.

2. Grounds of appeal read as under:-

1) The learned CIT(A) has erred in conforming the addition on interest expenses of Rs. 2,21,563/- u/s. 40A(2)(b), when payment of interest in excess of 12% is allowed as deductible expenses.

3. Brief facts on this issue are that AO noted that assessee has paid interest to related parties u/s. 40A(2)(b) @ 18%. Upon AO's enquiry, the assessee explained that assessee has paid interest @12% to 18% to outsiders as against interest @6% to 18% to persons specified u/s. 40A(2)(b) and that banks are also charging interest rate of

19% to 21%. The AO did not dispute the submissions, but proceeded to hold that interest payment over 12% to related parties was to be disallowed. The Ld.CIT(A) also confirmed that AO's action.

4. Against the above order assessee is in appeal before us.

5. I have heard the Ld. DR and perused the records. I note that when assessee has paid interest even @ 18% to outsiders, how it can be said that provision of section 40A(2)(b) are attracted. The said provisions are attracted when the payment to related parties is at a higher rate than that prevalent. Since the assessee's submissions that assessee has also paid interest @18% to others and the authorities below are not disputing at, disallowance u/s. 40A(2)(b) cannot be done for payment to related person.. Hence, I set aside the orders of the authorities below and decide the issue in favour of the assessee.

6. In the result, this appeal by the assessee stands allowed.

Pronounced in the open court on 16.12.2021

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 16/12/2021

Thirumalesh, Sr.PS

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,

(Assistant Registrar)
ITAT, Mumbai