

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)
"F" BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, HON'BLE JUDICIAL MEMBER**

ITA NO. 19/MUM/2020 (A.Y: 2011-12)

Shri Vijay Ravji Gajra 1303, Ellora Fiesta Plot No. 8 Sector-11, Opp. Juinagar Railway station Sanpada, Navi Mumbai-400706 PAN: AEDPG2541P	v.	Income Tax Officer – 22(3)(4) 3 rd Floor, Tower No. 6 Vashi Railway Station Building Complex Vashi, Navi Mumbai-400703
(Appellant)		(Respondent)

Assessee by	:	Ms. Ritu Kamal Kishore
Department by	:	Shri S.N. Kabra
Date of Hearing	:	06.10.2021
Date of Pronouncement	:	03.01.2022

ORDER

PER S. RIFAUH RAHMAN (AM)

1. Assessee filed this appeal aggrieved with the order passed by the Learned Commissioner of Income Tax (Appeals)–26, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 18.11.2019 for the A.Y.2011-12.

2. Assessee has raised following grounds in his appeal: -

"The appellant is aggrieved by the order passed by Id. CIT (A) – 26, Mumbai confirming the assessment order passed by ITO Ward 22(3)(4), Mumbai u/s 143(3) of the Income Tax Act, 1961 and is in appeal:

1. *Because, the Ld. CIT (A) has erred in law and on facts in not appreciating the fact that the order passed under Section 143(3) of the Act by the Ld. AO is wholly without jurisdiction.*

2. *Because, the Ld. CIT (A) has erred in law and on facts in not appreciating the fact that the order passed under Section 143(3) of the Act by the Ld. AO is time barred by virtue of provisions of section 143(2) of the Act and thus is void ab initio.*

3. *Because, Ld. CIT(A) has erred in law and on facts in accepting the addition of interest amounting to Rs.20,00,000/- on estimate basis out of the total interest claimed as deduction under the head "income from Other Sources".*

3. At the time of hearing, Ld. AR submitted that assessee preferred not to press Ground No. 1 and 2 and accordingly Ground No. 1 and 2 are dismissed as not pressed.

4. With regard to Ground No. 3 the brief facts relating to this ground are during assessment proceedings Assessing Officer observed from the details of "income from other sources" that assessee has debited ₹.1,34,25,894/- as interest on unsecured loans from various concerns. Assessing Officer held that assessee failed to furnish any details to show the nexus between the utilization of borrowed funds and income from the above concerns, assessee also failed to furnish confirmations, PAN, address of unsecured loans to show identity, creditworthiness of the lenders. In absence of the above details, Assessing Officer made an estimated addition of ₹.50,00,000/-.

5. Aggrieved assessee preferred appeal before Ld.CIT(A) and assessee also filed additional evidences before the Ld.CIT(A). Ld.CIT(A) remanded the matter to Assessing Officer. Assessing Officer after verifying all the details submitted by the assessee filled following remand report:

"2. In the computation of Income, the assessee has Set off negative interest under head business income against interest Income received from different entities viz. Punia Construction PVT. Ltd., G-2 Enclave Pvt. Ltd., Ellora Realities Pvt. Ltd., Ellora Asian Realities Pvt. Ltd & Ellora Buildwell pvt Ltd. and Interest income from various partnership firms. The assessee has claimed negative interest from the following concerns as under:

SL. No.	Name of the concern	
1.	ELLORA GROUP	95939
2.	NG GROUP -	11404815
3.	ANJALI BHOOMI DEVELOPERS	1730495
4.	MAHAVIR MARKETING	754441
5.	SARJAT	38353
	Total:	1,40,24,043

During the course of assessment proceedings, the assessee has not furnished any details to show that the borrowed funds were utilized for earning income. The assessee has not furnished the loan confirmations, PAN, name and address of the parties giving unsecured loans and thus the identity, creditworthiness and genuineness of the unsecured loans were not proved. The assessee has not furnished his Balance Sheet. Hence, the A.O has disallowed tee interest expenses claim of Rs. 50,00,000/on estimate basis.

3. Without prejudice to the above, the Ld. CIT (A) has directed to examine the veracity of the additional evidence furnished during the appeal proceedings. The report is as under: -

i) It is seen from the return of income that the assessee has set off interest expenses on unsecured loans to the tune of Rs.1,34,25,894/- against interest received of Rs.1,10,55,413/- u/s 57 from various partnership firms/pvt td companies on account of loans given to them under the head "income from other sources". The nature of business as shown by the assessee Is that he is Partner as well as Director in various Partnership Firm & Pvt. Ltd Companies and ail the

partnership firm and pvt ltd companies are engaged in the business of builder and developer. It is pertinent to note that the assessee has no business of his own. The assessee has taken unsecured loans from various parties and diverted the same to its sister concerns,

ii) it is the assessee's contention that the unsecured loans were already proved during the Block AYs 2009-10 & AY 2010-11 The assessee has offered Rs. 3.35 crores cash credit by way of loan in the return of income for AY 2009-10

iii) from the details and the Ledger Account, Bank statement & Balance Sheet of the sisters concerns submitted, it is seen that no interest has been paid by these concerns to the assessee, In the light of above the documents submitted, it is stated that the assessee has not charged any Interest on the loans given to the sister concerns.

iv) Itis seen "that the interest expenses claimed u/s 57 of Rs.1,34,25,894/- under the head income from the other sources is more than the Interest income earned of Rs.1,10,55,413/-. The allowability of claim of expenditure of the assessee, therefore may be considered on the merits of the case.

The remand report is submitted."

6. When the assessee was furnished with the remand report, assessee filed the reply vide letter dated 08.11.2019 which is reproduced below: -

"2. Adhoc disallowance of Rs 50 lacs on Claim of Interest Expenses of Rs 1,34,25, 894/-: The Appellant wish to place reliance on submission made in reply to remand report made vide submission dated: 08.11.2019 wherein apart from other contention, Appellant submitted that the LD AO in the given case has disallowed proportionate interest expenses without identifying the fact whether the said advances were made as a measure of commercial expediency. In case of S.A. BUILDERS LTD Vs Commissioner of Income Tax (Appeals) Chandigarh the Apex Court has held that "the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize its profit. The income tax authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. -The authorities must not look at the matter from their own view point but that of a prudent businessman. As

already stated above, we have to see the transfer of the borrowed funds to a sister concern from the point of view of commercial expediency and not from the point of view whether the amount was advanced for earning profits. The above said judgment was also followed by Apex Court in Hero Cycles (P) Ltd Vs CIT (Central) Ludhiana."

7. After considering the additional evidences, remand report from the Assessing Officer and the reply to the remand report of the assessee Ld.CIT(A) held that, *"However, it is an undisputed fact that the assessee has not charged interest from the sister concerns on the loans given to them and this fact has been accepted by the assessee as well. The assessee has stated that utilization of the loan funds forms part of commercial expediency, but he has not been able to establish the same in entirety. A mere claim that the funds were invested in various sister concerns for furtherance of business activity without any documentary proofs establishing the same, cannot be accepted fully. Hence, in view of the above, certain disallowance on interest expenses is called for, and the disallowance made by the AO is restricted to Rs. 20,00,000/- and the balance addition of Rs. 30,00,000/- is hereby deleted. Accordingly, ground no. 3 is 'Partly Allowed'.*

8. At the time of hearing, Ld. AR submitted that when the assessee filed detailed submissions and the Ld.CIT(A) remanded the matter to the Assessing Officer and Assessing Officer submitted his finding. After

considering the submissions of the assessee, Ld.CIT(A) partly allowed the ground raised before him and Ld.CIT(A) overlooked the commercial expediency in the transactions in financing to the sister concerns and interest claimed by the assessee. She prayed that the estimated disallowance made by the tax authorities may be deleted.

9. On the other hand, Ld. DR submitted that based on the facts on record Ld.CIT(A) has already considered and gave substantial relief to the assessee. He relied on the finding of the Ld.CIT(A).

10. Considered the rival submissions and material placed on record, we observe from the record that assessee has taken unsecured loans from various parties, the relevant details are filed by the assessee at Page No. 21 to 46 of the Paper Book which shows the details of loans taken and lending of loans to various parties which includes the firms and companies in which assessee is a partner/Director. Assessee has charged interest to other parties and declared the same as income from other sources whereas the loan given to sister concerns were not charged any interest. From the record submitted before us indicates that assessee has received interest and share of profit from partnership firms where assessee has deployed funds as capital which are sourced from various parties to deploy

the same in the sister concerns. The assessee also submitted details of interest received from private companies in which assessee is Director, the relevant information on interest received is given in the Paper Book filed by the assessee.

11. We observe from the record that the assessee has earned interest income of ₹.1,10,55,413/- u/s. 57 of the Act and claimed set off of interest expenses on unsecured loans to the extent of ₹.1,34,25,894/-. The actual interest claimed by the assessee is only ₹.23,70,481/-. As per record submitted before Ld.CIT(A) and in remand proceedings, the tax authorities acknowledged that assessee does not have any business on its own and he is partner and Director in various firms and Private Limited Companies, are engaged in the business of builder and developer.

12. Even before us, assessee has filed the details of loan given to various parties and from the details we observe that assessee has earned interest from all the parties except from the concerns and parties who are part of partnership firms and Private Limited Companies. It is fact on record that assessee has deployed the funds in the above said purpose and there is no personal utilization. This addresses the issue raised by the Assessing Officer that assessee might have utilized for personal use.

We observe that Ld.CIT(A) has accepted the above position but observed that assessee has deployed the funds in the concerns in which assessee has interest, however, he opined that assessee has not submitted any documentary evidences. We do not understand what other documents he expects. The document submitted before us clearly indicates that the funds utilization in the concerns in which the assessee has substantial interest and having controlling interest. In our considered view the assessee deployed funds in the concerns which he has substantial interest and it is for his interest to see that those concerns earn future profit and growth. It falls within the business expediency to make investments in the concerns of its interest.

13. Further we observe that Ld.CIT(A) intend to make certain disallowance but proceeded to make Rupees twenty lakhs estimation basis without fully appreciating the facts on record. The assessee has actually claimed the additional interest more than the interest earned by him. i.e. ₹.23,70,481/-. Ld.CIT(A) intended to make certain disallowance but made disallowance of Rupees twenty lakhs. In our view, the conduct of the assessee clearly indicates that interest were not charged from the concerns in which assessee has substantial interest and the funds were deployed for the business purpose. Therefore, assessee has proved the

business expediency. Hence the assessee is eligible to claim the interest difference as business expenditure. Accordingly, the ground raised by the assessee is allowed.

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

Order pronounced on 03.01.2022 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai / Dated 03.01.2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER
(Asstt. Registrar)
ITAT, Mum