

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 6750/मुं/2019 (नि.व 2012-13)
ITA NO.6750/MUM/2019(A.Y 2012-13)

Lavanya Sarees,
Shop No.1, Nepean Sea Road,
95, Shanti Nagar, Mumbai 400 006

PAN: AAAFL-1392-C

..... अपीलार्थी /Appellant

बनाम Vs.

Asstt. Commissioner of Income Tax ,
Circle 19(2),
2nd Floor, Matru Mandir, Tardeo Road,
Mumbai 400 012

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Swati Bunawat

प्रतिवादी द्वारा/Respondent by : Ms.Smita Verma

सुनवाई की तिथि/ Date of hearing : 06/09/2021

घोषणा की तिथि/ Date of pronouncement : 01/12/2021

आदेश/ ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals)-21, Mumbai [in short 'the CIT(A)'] dated 30/08/2019 for the Assessment Year 2012-13.

2. The assessee in appeal has raised following two issues:

(i) Disallowance of staff welfare & conveyance expenses - Rs. 24,511/-

(ii) Disallowance of interest on unsecured loan u/s. 40A(2)(b)
of the Income Tax Act, 1961 (in short 'the Act'). - Rs.6,89,392/-

3. Ms. Swati Bunawat appearing on behalf of the assessee submitted that assessee is a wholesale and retail trader of sarees and dress material. During the period relevant to the assessment year under appeal, the assessee had claimed conveyance expenses Rs.1,75,249/- and staff welfare expenses Rs.1,42,049/-. In scrutiny assessment proceedings the assessee was asked to explain details of these expenses. The assessee explained that conveyances expenses were towards bus fare for the staff, taxi fare for visiting customers and vendors, bus and taxi fare for delivery of goods to customers, etc. and staff welfare expenses includes expenses towards refreshment, tea, coffee, etc. for staff, retail and wholesale customers and wholesale vendors. The Id. Authorized Representative for the assessee pointed that the accounts of the assessee are subject to audit and the expenses have been duly accounted in the books. However, the Assessing Officer without considering the submissions of the assessee disallowed staff welfare expenses and conveyance expenses aggregating to Rs.3,17,298/-. The assessee carried the issue in appeal before the CIT(A). The CIT(A) after considering the submissions of the assessee made adhoc the disallowance of 25% in respect of staff welfare expenses and conveyance expenses.

3.1 The Id. Authorized Representative for the assessee pointed that the second issue in appeal is in respect of disallowance made u/s. 40A(2)(b) of the Act. During the relevant period the assessee had paid interest aggregating to Rs.20,68,177/- in respect of unsecured loans from various parties. The unsecured loan was taken @ 18% interest per annum. The Assessing Officer held that the rate of interest is on higher side and restricted the same to 12%, thereby making addition of Rs.6,89,392/-. In the First Appellate proceedings the CIT(A) upheld the findings of Assessing Officer on this issue. The Id. Authorized Representative for the assessee fairly admitted that unsecured loans were taken from related parties however, these were old loans which were continuing in the impugned assessment year. The Id. Authorized Representative for the assessee pointed that in assessment year 2007-08 similar addition was made by Assessing Officer, the CIT(A) reversed the findings of

Assessing Officer and the Department accepted the same. The Id. Authorized Representative for the assessee prayed that since the issue in present appeal is identical to assessment year 2007-08, rule of consistency demands that the disallowance made by Assessing Officer and confirmed by CIT(A) should be deleted.

4. Ms.Smita Verma representing the Department vehemently defended the impugned order. The Id.Departmental Representative submitted that the expenditure claimed by the assessee in respect of staff welfare expenses and conveyance expenses is not supported by any cogent evidence. The assessee had furnished copies of self made vouchers, which are self serving documents. The CIT(A) in a fair and reasonable order has restricted the disallowance on conveyance expenses and staff welfare expenses to 25%.

In respect of disallowance on interest u/s. 40A(2)(b) of the Act the Id.Departmental Representative submitted that assessee had taken unsecured loans from related parties at exorbitant rate of interest. The Assessing Officer has restricted the rate of interest to 12% i.e. the rate prevalent in the market and the CIT(A) has upheld the same. The Id.Departmental Representative pointed that the assessee has made investment in FDR Rs.93,00,000/- on which the assessee is earning interest much less than the interest paid on unsecured loan. The assessee could have used the said amount instead of unsecured loan at exorbitant interest rate. The Id.Departmental Representative prayed for dismissing the appeal of assessee and confirmed the order of CIT(A).

5. Both sides heard, orders of authorities below examined. The first issue in appeal raised by assessee is with regard to staff welfare expenses and conveyance expenses. The assessee is a wholesale and retail trader of sarees and dress material. The assessee had claimed expenditure towards staff welfare Rs.1,42,049/-. The expenditure was in the nature of tea, coffee, refreshment, etc for staff, customers and vendors. Similarly, the assessee had claimed conveyance expenses aggregating

to Rs.1,79,249/- in respect of bus fare of staff, bus/taxi fare for visiting wholesale customers, vendors and for delivery of goods to the customers. Both the aforesaid expenditure were supported by vouchers. The Assessing Officer made disallowance of Rs.3,17,298/- in respect of aforesaid expenditure. The CIT(A) after considering the submissions of assessee made adhoc disallowance of 25%. Considering the documents on record and submissions of the assessee, I find no plausible reason to make any disallowance in respect of staff welfare expenses and conveyance expenses. The assessee is a wholesale and retail trader. Expenditure towards refreshments, tea, coffee, etc. for the customers, vendors and staff is the business requirement of assessee. The expenditure claimed is not exorbitant keeping in view the sales turnover declared by the assessee. For the similar reasons I find no reason to make any disallowance in respect of conveyance expenses which ostensibly has been incurred for the travelling of the staff for visiting customers, wholesale traders and for delivery of goods to the customers. Consequently, the disallowance made in respect of staff welfare expenses and conveyance expenses is deleted in entirety.

6. In respect of disallowance of interest rate on unsecured loan u/s. 40A(2)(b) of the Act, it is an admitted fact that that the assessee has taken unsecured loan at interest rate of 18% from related parties. The Assessing Officer has restricted the rate of interest to 12% thereby disallowing 6% rate of interest. The disallowance has been made by the Assessing Officer merely on assumptions that the lending rate in the market is 12%. For making disallowance u/s 40A(2)(b) of the Act, the Assessing Officer has to form an opinion that the expenditure is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which payment is made. The Assessing Officer has not brought on record any documentary evidence to substantiate that fair market rate for unsecured loans is 12% and the rate of interest paid by the assessee @ 18% is on higher side. Thus, the estimation of rate of interest at 12% by the Assessing Officer is purely on estimation without any cogent material on record. The Assessing Officer has observed in the order that the assessee had made FDR amounting to Rs.93,00,000/-, wherein the interest offered is

far less than the rate at which the interest is paid on unsecured loan and that the assessee might be getting indirect benefit as a result of such excessive expenditure. I find the reasoning given by Assessing Officer for making disallowance u/s 40A(2)(b) of the Act untenable. The Assessing Officer cannot step into the shoes of assessee and dictate whether the assessee should have borrowed funds or should have utilized own funds for conducting business. The suspicion of indirect benefit from excessive expenditure is without any evidence. Surely, the Assessing Officer could have made disallowance u/s 40A(2) of the Act to disallow assessee's higher rate of interest provided the Assessing Officer had some cogent material to show that the fair market rate for securing unsecured loans is less than the rate at which the assessee has paid to its relatives. The Assessing Officer has made disallowance u/s. 40A(2)(b) purely on surmises and conjectures. It is further noted that similar disallowance u/s 40A(2)(b) of the Act was made in assessment year 2007-08 and the CIT(A) deleted the disallowance on the ground that no evidence has been brought on record by the Assessing Officer in support of his assertion that the prevailing market rate is 12%. The aforesaid decision of the CIT(A) was accepted by the Department. I find no reason to sustain the disallowance made u/s.40A(2) of the Act, therefore, the same is deleted.

7. In the result, findings of the CIT(A) in respect of the issues assailed by the assessee in appeal are set-aside and appeal by the assessee is allowed.

Order pronounced in the open Court on Wednesday the 1st day of December, 2021

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 01/12/2021

Vm, Sr. PS (O/S)

प्रतिलिपि अग्रहितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai