

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 85/Bang/2018
Assessment Year : 2011-12

Shri Rajib Chowdhury, Prop. M/s. Bright Petroleum, No. 340, 10 th B Main, 1 st Cross, 4 th Block, Basaveswaranagar, Bangalore – 560079. PAN: ABLPC6333L	Vs.	The Income Tax Officer, Ward 8 (3), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri B. Srinivasa, CA
Revenue by	:	Shri Sankarganesh K, JCIT (DR)

Date of Hearing	:	23-12-2021
Date of Pronouncement	:	31-01-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order dated 11.10.2017 passed by Ld.CIT(A)-7, Bangalore for Assessment Year 2011-12 on following grounds of appeal:

- “1. That on the facts of the case, the learned Income tax officer is not right in disallowing the interest paid on Loan.*
- 2. That on the facts and circumstances of case, the Learned Commissioner Appeal's should have observed that the Assessing officer has not recorded satisfaction with regard to genuineness of the transactions entered by the appelland and not provided an opportunity.*
- 3. That the Learned Commissioner Appeal's has not verified that bank statement disbursement of loan amount.*
- 4. That the learned Commissioner Appeal's has erred both on the facts and in Law.*
- 5. That the Learned Commissioner of Appeal should have examined the utilization of loan amount after loan*

disbursement by the Bank. The Learned Commissioner of the Appeal ignores the facts of the case and utilization of funds.

6. The Appellant hereby reserves the right to add, delete, or amend the grounds of appeal at the time of hearing.”

2. Brief facts of the case are as under:

2.1 The assessee filed its return of income for year under consideration on 04.11.20211 declaring total income of Rs.20,26,080/-. The assessee is proprietor of M/s. Bright Petroleum and is engaged in the business of retail trading of petroleum products which is petrol, diesel, oil etc. During the assessment proceedings, the Ld.AO noted that assessee is 60% partner in M/s. Bright Construction Corporation. From the details filed, the Ld.AO noted that assessee took loan from Standard Chartered Bank on 18.06.2007 amounting to Rs.1,41,00,000/-.

2.2 Further on perusal of statement of affairs for year ended 31.03.2011, the Ld.AO noted that assessee has capital of Rs.2,20,12,148/- and the loan from Standard Chartered Bank was shown at Rs.1,16,35,476/-. It was also noted by the Ld.AO that, assessee invested in fixed assets amounting to Rs. 1,29,57,296/- and the investments held by assessee in the proprietorship was Rs.1,22,48,274/-. The Ld.AO noted that assessee was paying interest of Rs. 18,38,596/- to Standard Chartered Bank against the loan obtained. The Ld.AO thus called upon assessee to establish as to why the interest paid to the Standard Chartered Bank should not be disallowed, as it do not relate to the business of assessee's proprietorship as the loan was not utilised for the purpose of business of assessee's proprietorship.

2.3 In response to the notice, assessee vide letter dated 13.02.2014 submitted that the loan was utilised for the purpose of business of M/s. Bright Petroleum being the proprietorship of assessee and that it was utilised to pay to IOCL as a part of assessee's business. It was

also submitted by assessee that loan was reflected in the personal balance sheet of Shri Rajib Chowdhury as on 31.03.2011 and that the utilisation of the fund was only for the purposes of M/s. Bright Petroleum.

The Ld.AO rejected the submissions of assessee and added the same of Rs. 18,38,596/- in the hands of the assessee.

2.4 Aggrieved by the addition made, the assessee preferred appeal before the Ld.CIT(A). The Ld.CIT(A) while deciding the issue observed and held as under:

“7. Now, the facts in the case of the appellant are that loan of Rs 1,16,35,476 from the bank has been taken by the appellant as an individual which is reflected in his individual statement of affairs. In turn the appellant has invested Rs 1,22,48,274 in his own proprietary concern M/s Bright Petroleum. The business balance sheet of M/s Bright Petroleum reveals that an amount of Rs 1,28,15,487 has been invested in the partnership firm of the appellant M/s Bright Construction Corporation where the appellant is a partner having 60% share in the profits. The claim of the appellant that the loan has been utilized for the business purpose of Bright Petroleum was not accepted by the AO as he noted that the statement of affairs of the appellant and the business balance sheet of Bright Petroleum clearly show that the loan has been diverted to Bright Construction Corporation, the partnership firm of the appellant. The appellant in his submission during appellate proceedings has contended that:

"The assessee has not claimed interest expenses in M/s Bright Construction Corporation during the AY 2011-12. The assessee has invested borrowed funds in M/s Bright Construction Corporation for the furtherance of the business interest of the assessee.

The assessee should have been allowed to claim expenses either in Bright Petroleum or in Bright Construction Corporation. The disallowance of entire interest is not justified in the interest of natural justice and equity.”

7.1 M/s Bright Construction Corporation is a partnership firm and hence, the claim and allowability of any interest in that case is to be governed as per partnership deed and the relevant provisions of the Law. To consider the claim of interest paid to the bank as a deduction in the case of the appellant as proprietor of M/s Bright Petroleum, it needs to be examined whether the loan has been utilized for the

purpose of the business of the appellant. The nature of the business of the appellant i.e. M/s Bright Petroleum is retail trading in petroleum, diesel and oil etc in its Petroleum Outlet. The appellant has neither explained nor brought anything on record to show how investment in Bright Construction Corporation has served business purpose of M/s Bright Petroleum or what was the commercial expediency for the appellant to justify the investment. Thus the claim of the appellant that 'the assessee has invested borrowed funds in M/s Bright Construction Corporation for the furtherance of the business interest of the assessee' remains unsubstantiated. Therefore, following the ratio of the decision of the Honourable SC (supra), the 'claim of the appellant of the interest paid to the bank as a deduction cannot be allowed.'

3. Aggrieved by the order of Ld.CIT(A), the assessee is in appeal before us.

The Ld.AR submitted that authorities below have wrongly inferred that the loan amount was diverted to M/s. Bright Construction Corporation merely on the balance sheet of the proprietorship of the assessee. It has been submitted by Ld.AR that such conclusion has been derived without verifying the documents. The assessee has also submitted that the Ld.CIT(A) did not give sufficient opportunity to assessee to explain and produce relevant documents in support of its contention. The Ld.Sr.DR relied on the decision of *Hon'ble Karnataka High Court* in case of *T.P. Indrakumar vs. ITO* reported in [2010] 322 ITR 454. He submitted that the said addition was an admission on behalf of assessee before the Ld.AO. He thus submitted the orders passed by the authorities below.

4. We have perused the submissions advanced by both sides in the light of records placed before us. We note that the utilisation of the loan by assessee has not been verified by the authorities below. In the submission filed by assessee dated 03.08.2021, assessee has placed summary of payments made subsequent to the loan having waived.

All these details along with the balance sheet from the year in which such loan was taken needs to be looked into before coming to such conclusion. We note that Ld.CIT(A) has not called for any details to verify the contentions of the assessee. The entire disallowance is based on surmises and conjectures and therefore cannot be appreciated. We are therefore inclined to remand this issue to the Ld.CIT(A) to carry out necessary verification in respect of the details filed by assessee. The assessee is thus directed to file all the relevant documents in support of its contention and the utilisation of the loan amount. The Ld.CIT(A) is directed to pass detailed order on merits in accordance with law. Needless to say that proper opportunity of being heard must be granted to assessee.

Accordingly, the grounds raised by assessee stands allowed for statistical purposes.

In the result, the appeal filed by assessee stands allowed for statistical purposes.

Order pronounced in the open court on 31st January, 2022.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 31st January, 2022.
/MS /

Copy to:

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|---------------|------------------------|
| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore