

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

**BEFORE SHRI PRAMOD KUMAR, VP &
Ms. KAVITHA RAJAGOPAL, JM**

आयकरअपीलसं./ I.T.A. No. 1510/Mum/2019
(निर्धारणवर्ष / Assessment Year: 2015-16)

Zee Fabrics Inc. 2/B, 2 nd floor, Jaihind Estate CHS, Shop No. 4, Dr. A. M. Road, Mumbai-400 002	बनाम/ Vs.	ACIT – 18(3), R. No. 609, 6 th floor, Earnest House, Nariman Point, Mumbai-400 021
स्थायीलेखासं ./जीआइआरसं ./PAN No. AA AFZ8533D		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri D. M. Shah, Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Hoshang B. Irani, Ld. DR
सुनवाईकीतारीख/ Date of Hearing	:	09.02.2022
घोषणाकीतारीख / Date of Pronouncement	:	28.02.2022

आदेश / ORDER

Per Kavitha Rajagopal, Judicial Member:

This Appeal filed by the assessee challenges the impugned order dated 31.01.2019, passed by the Ld. Commissioner of Income Tax (Appeals) – 29, Mumbai in short referred as ‘Ld. CIT(A)’ in confirming the additions made u/s 40A(2)(a) of

Income Tax Act, 1961 (in short 'the Act') by disallowing the interest expenses as excessive and unreasonable concerning the Assessment Year (in short AY) 2015-16. The grounds of appeal pertain to the present appeal are as follows:-

1. On the facts and in the circumstances of the case, the learned CIT (Appeals) erred in confirming the addition of Rs. 27,84,252/- made u/s.40A(2)(a) by disallowing out of interest expenses, which is contrary to the facts and it should be deleted.

2. The learned CIT(Appeals) failed to appreciate that, the interest paid is not excessive and unreasonable and the provision of section 40A(2)(a) are not attracted and the addition made be deleted.

3. The CIT(Appeals) erred in observing that, the interest paid to the persons falling u/s.40A(2)(B) is excessive and hence the disallowance is confirm.

4. The appellant prays the addition made be deleted. WITHOUT PREJUDICE, the addition made be reduced.

2. The brief facts of the case are that the assessee is a partnership firm engaged in the business of trading and wholesaler of fabric. The assessee filed his return of income for AY 2015-16 on 30.09.2015 declaring the total income of Rs. 10,82,96,500/-. It was evident from the assessee's record submitted during the assessment proceedings that the assessee had paid interest @ 18% per annum from persons related to him as unsecured loans and 12% from persons not related to him. The list of persons is tabulated in the assessment order respectively. On the basis of this, AO opined that the loans taken from the

related persons specified u/s 40A(2)(b) are at higher rate of interest and concluded that such expenditure are excessive and unreasonable having regard to the fair market value of the goods, services and facilities. The AO disallowed 6% of the rate of interest over and above 12% and added Rs. 20,84,252/- to the total income of the assessee. Consequently, penalty proceedings u/s 271(1)(c) of the Act was also initiated for concealment of income. This was further confirmed by Ld. CIT(A) in the assessee's appeal. Aggrieved by such order passed by Ld. CIT(A), assessee is in appeal before us.

3. Before us, Ld. AR averred that this issue is covered by the order of Coordinate Bench of ITAT, Mumbai in ITA No. 3110, 3111 & 3112/Mum/2018 dated 26.07.2019 and relied on the same.

4. On the other hand, Ld. DR contended that the interest rate should pertain to fair market value and the assessee's claim is excessive and unreasonable.

5. We have carefully considered the submission of the rival parties and perused the material placed on record. The fact that assessee has borrowed unsecured loan from persons related as well as from others outside the purview of section 40A(2)(b) and paid interest to such persons is not disputed by the AO and the Ld. CIT(A). The only issue that arises from the appeal is that the rate of interest ascertained @ 18% is excessive and unreasonable considering the prevailing market rate during the relevant period

is the decisive factor for the applicability of section 40A(2)(a). Section 40A(2)(a) proceeds to set out that such expenditure should not be excessive or unreasonable having regard to market value of the goods and services or facilities. It does not delineate what is 'fair market value'. The AO on the other hand has failed to prove what method he has adopted to determine the fair market value. The reasoning that the AO has taken was that the assessee has availed similar loan from persons not related to him at a rate of 12%, should not have been the only reliance placed for disallowances. The provision also states that expenses incurred for 'legitimate needs of the business /profession' which can be inferred that the assessee has availed various loans for the need of the business and not otherwise. The interest paid by the assessee on unsecured loans during the relevant period cannot be said to be excessive or unreasonable as unsecured loans are without any security and are always availed for business contingencies. It is pertinent to point out that the nature of business of assessee warrants continuous amount of funds which cannot be always availed in the banks and the only spontaneous availability is from persons known to the assessee. We do not find any reproach in such loan being availed at a higher rate of interest as a necessity to carry on business.

6. The justification of the AO that assessee has paid 12% rate of interest to others is not appropriate as the borrowing of money for higher rate of interest depends on the necessity of funds required in the functioning of business. Furthermore, the AO

erred in not making any detail enquiry as to the fair market rates nor has he made any comparables with regard to prevailing market rate. Accordingly, we delete the disallowances made by the AO for the relevant assessment year under appeal.

7. In the result, the appeal filed by the assessee is **allowed**.

Orders pronounced in the open court on 28.02.2022.

Sd/-
(Pramod Kumar)
Vice President

Sd/-
(Kavitha Rajagopal)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 28.02.2022
Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai