

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD ' SMC ' BENCH, HYDERABAD.**

BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER

ITA No.487/Hyd/2021 (Assessment Year : 2016-17)		
Shri Chanbasha Shaik, Gudur. PAN AOCPS6761C	Vs.	Asst. Commissioner of Income Tax, Circle 2(1), Tirupati.
Appellant		Respondent

Appellant By : Shri Abid, C.A.

Respondent By : Shri Jeevanlal Lavidiya, (D.R.)

Date of Hearing : 10.03.2022.

Date of Pronouncement : 16.03.2022.

O R D E R

This assessee's appeal for Asst. Year 2016-17 arise from the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi's order dt.13.09.2021 passed in the case No. ITBA/NFAC/S/250/2021-22/1035520654(1) involving proceedings under Section 143(3) of Income Tax Act, 1961 ('the Act').

Heard both the parties. Case file perused.

2. The assessee raises the following substantive ground in the instant appeal :

1. The Commissioner of Income Tax has erred in disallowing the appeal confirming the order Assessing Officer which is against natural law and justice.
 2. Your petitioner submits that he has paid Interest through cheque which was confirmed by the person who has received the interest.
 3. Your petitioner submits that the assessee followed Mercantile system and hence accounted for interest on one amount at 18% though the rate of interest is at 24% which was mistake as he has believed friend who has helped in securing loan and promised that he will negotiate at 18% at the time of repayment of loan which was not agreed in the lender T.J. Finance and hence forced to pay 24% at the time of clearing of loan have claimed by assessee.
 4. The interest receipts were duly accounted for by the T.J. Finance who are in Money lending business since so many years and he is one of the largest tax payer at Chennai.
 5. Your petitioner submits that disallowing interest paid by assessee amounts to double taxation on which the T.J. Finance paid tax and filed Return of Income.
 6. Your petitioner submits that he has produced proof that the T.J. Finance paid tax through account copy from his books and also copy of certificate from their Auditor that the same amount has suffered tax which was rejected by the Appeal Commissioner which was against natural law and justice.
 7. The taxing of interest paid by assessee is not justifiable as he has produced proof that the same has suffered tax and again taxing in the hands of assessee is against natural law and justice as it amounts to double taxation.
3. Learned CIT(A)'s detailed lower appellate discussion affirming the Assessing Officer's action making interest disallowance reads as under :

"4. Decision

The facts of the submission of the appellant have duly been considered Ground No.1 to 4 are related to disallowance of interest of Rs.13,31,950. The A.O. has disallowed interest of Rs.13,31,950/- u/s.36(1)(iii). The A.O. has given the finding that in loan account No.2, the interest expense included interest payment pertaining to A.Y. 2015-16, even though the appellant follows mercantile system of

accounting. The A.O. has held that expense pertaining to the relevant A.Y. can only be allowed. He has proceeded to compute eligible interest payable at Rs.9,44,550/- at the rate of 18% for the relevant A.Y. 2016-17 in respect of loan account No.2 and the remaining interest claim of Rs.13,31,950/- was disallowed. The appellant has taken the plea that since interest was paid by cheque, the same should be allowed. The appellant has not furnished any other document etc. in support of his grounds of appeal. In view of the above, I don't find any reason to differ with the findings of the A.O. Hence ground No.1, 2 and 3 are dismissed."

4. Suffice to say, both the learned representatives reiterate their respective stands against and in favour of correctness of the impugned disallowance. It is an admitted fact that neither the Assessing Officer nor the CIT(A) have examined the corresponding relevant facts and circumstances of the assessee having claimed the impugned interest expenditure in Assessment Year 2016-17 wherein at the rate of 18% than the earlier assessment year 2015-16; as the case may be.

5. Coupled with this, the fact remains that the CIT(A) has passed his lower appellate order during covid-19 pandemic outbreak only involving all lockdown restrictions. Faced with this situation, I deem it appropriate to restore the instant appeal back to the Assessing Officer for his afresh adjudication as per law within three effective opportunities of hearing.

6. This assessee's appeal is allowed for statistical purposes in above terms.
Order pronounced in the open court on 16th Mar., 2021.

Sd/-

(S.S. GODARA)
Judicial Member

* Reddy gp

Copy to :

1.	Shri Chan Basha Shaik, No.1-107-1, DVR Palli, Gudur-524 101 SPSR Nellore District.
2.	ACIT, Circle 2(1), Tirupati.
3.	CIT(Appeals), NFAC, Delhi.
4.	DR, ITAT, Hyderabad.
5.	Guard File.

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.