

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR**

**(Through Virtual Court)**

**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER  
AND  
SHRI JAMLAPPA D BATTULL, ACCOUNTANT MEMBER**

**आयकर अपील सं. / ITA No. 246/RPR/2017**

**निर्धारण वर्ष / Assessment Year : 2014-15**

M/s. Brothers R. Kothari,  
Shop No.111, Main Road,  
Kanker, Near SBI, Kanker (C.G.)

PAN : AAGFB2424F

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income Tax-2(1),  
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by  
Revenue by

:Shri Sunil Agrawal, AR  
:Shri Sanjay Kumar, DR

सुनवाई की तारीख / Date of Hearing : 15.03.2022  
घोषणा की तारीख / Date of Pronouncement : 30.03.2022

**आदेश / ORDER**

**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the CIT(Appeals)-1, Raipur, dated 13.07.2017, which in turn arises from the order passed by the A.O under Sec.143(3) of the Income-tax Act, 1961 (in short 'the Act'), dated 20.09.2016 for assessment year 2014-15. Before us the assessee has assailed the impugned order on the following grounds of appeal :

“1. That learned CIT Appeal erred in confirming of disallowance of interest from 3% to 2% i.e. accepted 16% interest paid to unsecured loan against 18% paid by appellant since past so many years and accepted by department which learned AO also accepted in order.

- a) That we rely on 29 ITJ 89 (Jabalpur Tribunal) in Raj Traders ITO which accepted that AO has not given any evidence of lower interest rate so allowed interest paid @18%, 19% & 20.52%.
- b) That TDS by appellant firm has been made for unsecured creditors on interest paid @18% & they are already taxed, so disallowing here is a double taxation.
- c) That unsecured loans are easily available as compared to Bank which is not so easy and more difficulty.”

2. Controversy involved in the present appeal lies in narrow compass, i.e, sustainability of disallowance of interest expenses made by the Assessing Officer u/s 40A(2)(a) of the Act.

3. Succinctly stated, the assessee had claimed deduction of interest expenses @18% on the old unsecured loans that were raised by it from its related parties. Observing, that the claim for deduction of interest expenses @18% on the unsecured loans was higher as in comparison to rate at which the assessee could have procured the loan from bank, i.e, @15%, the Assessing Officer disallowed the excess rate of interest, i.e, 3% and made a consequential disallowance of Rs.10,10,357/- u/s.40A(2)(a) of the Act. Backed by his aforesaid observations, the Assessing Officer vide his order passed u/s 143(3) of the Act, dated 20.09.2016 determined the income of the assessee at Rs.30,66,827/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals). Observing that rate of 16% could fairly be taken as a reasonable rate of interest paid by the assessee on the unsecured

loans that were raised from related parties, the CIT(Appeals) scaled down the disallowance to 2%.

5. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

6. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. Before advertng any further, we think it apt to cull out Section 40A(2)(a) of the Act, which reads as under:

**“40A.** (1) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other provision of this Act relating to the computation of income under the head "Profits and gains of business or profession".

(2)(a) Where the assessee incurs any expenditure in respect of which payment has been or is to be made to any person referred to in clause (b) of this sub-section, and the Assessing Officer is of opinion that such expenditure is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment is made or the legitimate needs of the business or profession of the assessee or the benefit derived by or accruing to him therefrom, so much of the expenditure as is so considered by him to be excessive or unreasonable shall not be allowed as a deduction :

**Provided** that for an assessment year commencing on or before the 1st day of April, 2016 no disallowance, on account of any

expenditure being excessive or unreasonable having regard to the fair market value, shall be made in respect of a specified domestic transaction referred to in section 92BA, if such transaction is at arm's length price as defined in clause (ii) of section 92F.”

7. In our considered view, the provisions of section 40A(2)(a) of the Act can be triggered only where the Assessing Officer is of the opinion that the expenditure incurred by the assessee in respect of a related party transaction is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment is made, or, the legitimate needs of the business or profession of the assessee, or, the benefit derived by or accruing to the assessee therefrom, then, so much of the expenditure as is considered by him to be excessive or unreasonable shall not be allowed as a deduction. In the case before us, we find that the Assessing Officer had in his attempt to point out that the interest paid by the assessee i.e @18% p.a on the unsecured loans that was raised from related parties was excessive or unreasonable, had compared the same with the rate of interest at which loans could have been raised from a bank i.e @15%. The aforesaid basis adopted by the Assessing Officer is clearly fallacious. In our considered view, the Assessing Officer, while

adopting the bank lending rate had lost sight of the fact that the loans from the bank would have required providing of security, incurring of certain hidden charges, as well as satisfaction of number of other formalities; unlike the raising of unsecured loans by the assessee from its related parties. Backed by our aforesaid observations, we are unable to find favour with the incomparable basis that had been adopted by the Assessing Officer for triggering the provisions of section 40A(2)(a) of the Act. Apart from that, we find, that as brought to our notice by the Ld. AR, the assessee in the immediately preceding year i.e. A.Y. 2013-14 had paid interest on the unsecured loans in question @18% and the same had been accepted by the Assessing Officer vide his order passed u/s. 143(3) of the Act, dated 20.09.2016 for the said year. In order to buttress his aforesaid claim, that the lenders during the year under consideration were there in the immediately preceding year, the Ld. AR had drawn our attention to the details of the lenders placed at Page 79 of the paper book wherein the details of the lenders pertaining to A.Y.2013-14 are found mentioned. In the backdrop of our aforesaid observations, we are of a strong

conviction that not only the basis adopted by the Assessing Officer for triggering the provision of section 40A(2)(a) of the Act is fallacious, but the same also militates against the fact that the interest paid by the assessee on the said unsecured loans @ 18% had been accepted by the department while framing the regular assessment in its case for the immediately preceding year i.e. A.Y. 2013-14. We, thus, in terms of our aforesaid deliberations, are unable to persuade ourselves to concur with the view taken by the lower authorities. Accordingly, we set-aside the order of the CIT(Appeals) and vacate the disallowance u/s.40A(2)(a) of the Act to the extent the same had been sustained by him.

8. In the result, appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced in open court on 30<sup>th</sup> day of March 2022.

Sd/-  
**JAMLAPPA D BATTULL**  
**(ACCOUNTANT MEMBER)**

Sd/-  
**RAVISH SOOD**  
**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 30<sup>th</sup> March, 2022  
SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G)
4. The Pr. CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुरबेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

**// True Copy //**

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	15.03.2022	Sr.PS/PS
2	Draft placed before author	16.03.2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		