

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपीलसं./ITA No. 3099/Chny/2017
(निर्धारणवर्ष / Assessment Year: 2014-15)

Ranjani Enterprises Pvt Ltd. No. 1, Sengazhani Amman Kovil Street Puzhuthivakkam, Chennai – 600 091	बनाम/ Vs.	Income Tax Officer Corporate Ward 5(4), Chennai- 600 034.
स्थायी लेखासं./जी आइ आरसं./PAN/GIR No. AABCR-7941-P		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri R. Sivaraman (Advocate) – Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Ms. R. Halen Ruby Jesintha (Addl. CIT) –Ld. DR

सुनवाईकीतारीख/ Date of Hearing	:	16-02-2022
घोषणाकीतारीख / Date of Pronouncement	:	01-04-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2014-15 arises out of the order of learned Commissioner of Income Tax (Appeals)-3, Chennai [CIT(A)] dated 29-09-2017 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 26-12-2016. The grounds of appeal raised by the assessee read as under:

The order of the CIT(A) dated 28.09.2017 is contrary to law and facts of the case.

1. The CIT(A) erred in confirming the assessing notional interest of Rs. 4,16,71,809/-.
2. The CIT(A) erred in not appreciating the fact that under the Income Tax Act notional interest cannot be assessed.
3. The CIT(A) erred in not appreciating the fact that the appellant did not charge interest on amount advanced to Hymavathi Enterprises Private Limited as they requested not to charge interest as they were facing financial difficulties and that non charging of interest was due to financial difficulties faced by Hymavathi Enterprises Private Limited.
4. For these and other grounds that may be adduced before or at the time of hearing the Honorable ITAT may be please to delete the additions of Rs. 4,16,71,809/-.

As evident the assessee is aggrieved by assessment of notional interest of Rs.416.71 Lacs.

2. The Ld. AR assailed the addition of notional interest and submitted that the same could not be added to the income of the assessee. The Ld. AR also assailed the addition by relying upon the decision of Hon'ble Supreme Court in the case of **S.A. Builders Ltd vs CIT (288 ITR 1)** and also on the decision of **Hero Cycles Pvt. Ltd vs CIT (379 ITR 347)**. The copy of the same has been placed on record. The Ld. Sr. DR, on the other hand, submitted that the borrowed funds were utilized to make interest-free advances and therefore, the additions were justified.

3. Having heard rival submissions and after going through the orders of lower authorities, our adjudication would be as given in subsequent paragraphs.

Assessment Proceedings

4.1 The assessee being resident corporate assessee is stated to be engaged in the business of chit fund. It was assessed for the year u/s. 143(3) wherein it was saddled with addition of notional interest for Rs.416.71 Lacs. The addition stem from the fact that during the course of assessment proceedings, it transpired that the assessee claimed

interest expenses of Rs.644.65 Lacs and earned interest income of Rs.111.92 Lacs. It transpired that the loan taken from shareholders were Rs.5521.26 Lacs, out of which fresh loans were Rs.3400 Lacs. The assessee had advanced loan of Rs.3100 Lacs to an entity namely M/s. Hymavathi Enterprises P. Ltd. (HEPL) and outstanding balance at year-end was Rs.3606.76 Lacs.

4.2 The assessee explained that during 2012-13, HEPL expressed inability to pay interest on advances since they were facing financial difficulties. Accordingly, they requested assessee not to charge interest which was agreed upon by both the parties. However, rejecting the same, Ld. AO proceeded to compute notional interest of 18% on outstanding loans. The assessee opposed the same on the ground that though the interest was charged in earlier years till 31.03.2012, no interest was paid to shareholders till 31.03.2013. The interest was paid to shareholders from 01.04.2013 onwards only. There was commercial expediency of not charging interest since the borrower was facing financial crunch.

4.3 However, rejecting the submissions, Ld. AO computed notional interest of Rs.416.71 Lacs and added the same to the income of the assessee.

Appellate Proceedings

5. During appellate proceedings, the assessee additionally submitted that there was no provision under the Act to assess the notional interest on loans. The assessee also submitted that no interest was charged from HEPL since they were facing financial difficulties. However, Ld. CIT(A) confirmed the addition of notional interest with following observations: -

4.3. I have considered findings of the AO and submissions made by the Ld.AR. There is no dispute in so far as bare facts are concerned. Appellant had taken loans from its shareholders and interest expenditure has been claimed to the tune of Rs.6,44,65,7587-. On the other hand, appellant is admitted to have advanced an amount of Rs.31 Cr. to M/s.Hymavathi Enterprises Pvt Ltd. The total outstanding amount is stated to have been shown at Rs.36,06,76,719/-. It means that appellant had borrowed loans at Rs.55,21,26,7197- during the asstyear 2014-15. However, out of the said borrowed amount, appellant is admitted to have advanced loan to the tune of Rs.36,06,76,719/- to M/s.Hymavathi Enterprises Pvt Ltd. which is substantial amount. During the assessment proceedings, the appellant was asked to show a cause as to why interest has not been charged against the loan amount given to M/s.Hymavathi Enterprises Pvt Ltd. In response to AO's show cause notice, appellant is seemed to have stated that M/s.Hymavathi Enterprises Pvt Ltd. has made a request of not charging interest due to its financial difficulties which has been readily accepted by the appellant and not charged interest against the loan amount given to M/s.Hymavathi Enterprises Pvt Ltd.

4.4. Be it as it may, before me, Ld.AR has not made any substantial argument except stating that advances made to M/s.Hymavathi Enterprises Pvt Ltd. stood at Rs.49.60 crores at the end of the financial year 31.03.2014 and the said concern was not financially sound due to which interest was not charged. It is further stated that it was purely a business decision and the advances were brought down to very meager level in the immediate next year.

4.5. The submissions made by the Ld.AR are considered and found repetition of submissions made before the AO. Further, in my considered opinion, there is no substance in the submissions made by the Ld.AR. At one hand, appellant is paying huge interest to the persons from whom loans were taken, on the other hand, appellant has decided not to charge interest to the persons to whom advances were given. How can it be a business transaction? No prudent businessman should do this sort of transaction except external, undisclosed, clandestine arrangement. In the appellant's case, M/s.Hymavathi Enterprises Pvt Ltd. is a part of Sriram group of companies like the appellant. This transaction between the appellant and M/s.Hymavathi Enterprises Pvt Ltd. is nothing but a share transaction and part of group's tax planning. In the circumstances, as facts stand I do not find any infirmity in the action of the AO. In normal business transaction, no prudent businessman would loose money, if, transaction is done at arm's length. Hence, the submissions of the Ld.AR are found devoid of merits. On the other hand, findings of the AO are based on facts and rightly charged interest on the amount advanced to M/s.Hymavathi Enterprises Pvt Ltd. Therefore, I sustain the addition made by the AO and all the grounds taken on this issue are dismissed.

Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

6. After careful consideration of material facts, the undisputed position that emerges is that the assessee has paid interest expenses of Rs.644.65 Lacs and earned interest income of Rs. 111.92 Lacs. The

loans taken from shareholders amounts to Rs.5521.26 Lacs out of which fresh loans were Rs.3400 Lacs. The assessee had advanced loan of Rs.3100 Lacs to HEPL and the outstanding balance at year-end was Rs.3606.76 Lacs. It has been explained by the assessee that during 2012-13, HEPL expressed inability to pay interest on advances since they were facing financial difficulties. Accordingly, they requested assessee not to charge interest which was agreed upon by both the parties. However, rejecting the same, Ld. AO has computed notional interest of 18% on outstanding loans advanced by the assessee. On the basis of these facts, we are of the considered opinion that the addition of notional interest is not sustainable in the eyes of law. It is trite law that only real income is to be assessed to tax unless expressly provided under the act. No statutory provision has been shown to us which mandate addition of notional interest. The assessee had debited interest expenditure during the year. As per the provisions of Sec.36(1)(iii), Ld. AO could have disallowed interest expenditure if the interest was paid in respect of capital borrowed which was not used for the purposes of business or profession. As per the mandate of Sec.36(1)(iii), the amount of interest paid in respect of capital borrowed for the purposes of business or profession is an allowable deduction. In the instance case, Ld. AO could have invoked the provisions of Sec.36(1)(iii) to hold that the borrowed capital was not used for the purposes of business or profession. However, the same has not been done and the provisions of Sec.36(1)(iii) have not been invoked. Rather Ld. AO has computed notional interest on loans advanced by the assessee which do not find support of any statutory provisions. Therefore, the action of Ld. AO, in

adding the notional interest on outstanding loans, in not in accordance with law and hence not sustainable.

7. Another aspect of the matter is that the loan has been granted by the assessee to its sister concern. Naturally the assessee had business interest in that entity. The assessee has charged interest till 31.03.2012 and thereafter no interest has been charged as per mutual understanding since the borrower entity was facing financial difficulties. The assessee did not pay interest to the shareholders till 31.03.2013. Therefore, non-charging of interest was fully justified by the assessee and the same could be said to have been out of commercial expediency. In such a case the ratio of decision of Hon'ble Supreme Court in the case of **S.A. Builders Ltd vs CIT (288 ITR 1)** would be applicable wherein it was held that once it was established that there was nexus between the expenditure and purposes of business, which need not be the business of the assessee, deduction u/s 36(1)(iii) was to be allowed. It was further held that the expression 'commercial expediency' is an expression of wide import and includes such expenditure as prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation but yet it is allowable as a business expenditure if it was incurred on grounds of commercial expediency. Further, the expression 'for the purpose of business' is wider in scope than the expression 'for the purpose of earning profits'. This decision has subsequently been followed by Hon'ble Court in **Hero Cycles Pvt. Ltd vs CIT (379 ITR 347)**. We find that the ratio of these decisions is applicable to the facts of the case considering the arguments of the revenue that that the provisions of Sec. 36(1)(iii) have been invoked. Viewed from any angle, the additions as made by Ld. AO

is not sustainable. We order so. The Ld. AO is directed to re-compute assessee's income by deleting the impugned addition.

8. The appeal stands allowed in terms of our above order.

Order pronounced on 01st April, 2022

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य /ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 01-04-2022
JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF