

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 825/CHNY/2020

निर्धारण वर्ष /Assessment Year:2014-15

M/s. N.S. Rama Rao Body Works,
No.47-A, Naidu Street, Kottur
Garden, Kotturpuram,
Chennai – 600 085.

The ACIT,
v. Non-Corporate Circle -1(1),
Chennai.

PAN: AAAFN 2000M

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: None

प्रत्यर्थी की ओर से/Respondent by

: Shri G. Johnson, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 31.03.2022

घोषणा की तारीख/Date of Pronouncement

: 04.04.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

This appeal by assessee is arising out of the order of the learned Commissioner of Income Tax (Appeals)-2, Chennai in ITA No.362/CIT(A)-2/2016-17 dated 04.08.2020. The assessment was framed by the ACIT, Non-Corporate Circle 1(1), Chennai for the assessment year 2014-15 u/s.143(3) of the Income Tax Act, 1961 (hereinafter 'the Act') vide order dated 02.12.2016.

2. The first issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in disallowing proportionate interest u/s.36(1)(iii) of the Act amounting to Rs.46,37,667/-. For this assessee has raised following Ground Nos.2 & 3:-

“2. For that the Learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance u/s.36(1)(iii) of the Act amounting to Rs.46,37,667/-.

3. For that the Learned Commissioner of Income Tax (Appeals) failed to appreciate that the loans were advanced out of the partners' capital and not out of the borrowed funds as alleged in the assessment and hence the provisions of Section 36(1)(iii) of the Act are not applicable.”

3. Brief facts are that the assessee is engaged in manufacturing industrial business. During the course of scrutiny assessment proceedings, the AO required the assessee to file details of interest expenditure claimed at Rs.3,18,46,758/-. The assessee filed various submissions and stated that the assessee is in receipt of secured loan of Rs.11,29,35,191/- and unsecured loan of Rs.4,48,86,253/-. The AO noted from the balance sheet that the assessee's firm has advanced interest free loans to related parties namely Shri Aditya Mahesh – Rs.82,12,500/-, Shri Ajay Mahesh – Rs.76,12,500 and NSR Elekemet P Ltd – Rs.3,25,00,000/-. As the

assessee has further advanced interest free loans to above stated parties, the AO disallowed interest u/s.36(1)(iii) of the Act i.e., proportionate interest on interest free loans advanced to related parties amounting to Rs.46,37,667/-. Aggrieved assessee preferred appeal before CIT(A).

4. The assessee before CIT(A) claimed that the capital of the partners i.e., interest free capital available with the assessee amounting to Rs.8.43 crores as against the interest free advances given at Rs.4,83,28,000/-. The assessee before CIT(A) stated that the AO has nowhere proved the nexus despite all the details like books of accounts were produced before him, the presumption that the interest free advances of Rs.4.83 crores is given out of available capital of partners at Rs.8.43 crores. But the CIT(A) has not considered this aspect and by cryptic order confirmed the action of AO by observing in para 6.4 as under:-

“6.4 However the A.R did not bring any material on record to establish that the interest free advances were given out of the capital of the Partners. Hence the disallowance of interest u/s 36(1)(iii) is upheld.”

Aggrieved, now assessee is in second appeal before the Tribunal.

5. None is present from assessee's side despite the matter is fixed on two times. Hence, we decided to hear the appeal ex-parte, qua assessee. On the other hand, the Id. Senior DR, Shri G. Johnson argued on behalf of the Revenue. When pointed out that the order of CIT(A) is cryptic and even the CIT(A) has not adjudicated the issue of presumption that the assessee has advanced this interest free loans of Rs.4.83 crores to three related parties out of the partners capital which is Rs.8.43 crores. The Id. Senior DR stated that it is for the assessee to prove the nexus and not the Revenue. When specifically it was pointed out to Id. Senior DR, that the assessee has produced books of accounts and evidences that the assessee has claimed interest on unsecured loans of Rs.4.48 crores and secured loans of Rs.11.29 crores, the AO should have proved the nexus as the assessee has discharged its initial onus by producing the books of accounts and other details. We noted that this issue has been decided by the Hon'ble Madras High Court in the case of CIT vs. Hotel Savera, (1999) 239 ITR 795, wherein it is held that no disallowance can be made in respect of interest money borrowed, where the assessee has both his own money as well as borrowed money. A presumption can arise that the money lent, even free of interest, came out of his own funds. We are not in agreement with the arguments of

Id.Senior DR that the mere production of books of accounts or details of interest free funds available or details of interest free advances made, the assessee has not discharged its onus. The assessee in such situation has discharged its initial onus and rest is for Revenue to decide. Since, in the present case before us the facts are not available and CIT(A)'s order is totally cryptic and even the AO has not discussed anything, we have no alternative except to remand the matter back to the file of the CIT(A). In such event, we set aside the order of CIT(A) and remand the matter back to his file for fresh adjudication and for passing a speaking order. This issue of assessee's appeal is allowed for statistical purposes.

6. The next issue in this appeal of assessee is as regards to the order of CIT(A) in not considering the voluntary disallowance of Rs.33,17,609/- towards Ioran received from M/s. Religare u/s.40(a)(ia) of the Act.

6.1 After hearing Id. Senior DR, we noted that since the main issue has already been remanded back to the file of CIT(A), the CIT(A) will look into this aspect also. This issue is also remanded back to the file of the CIT(A).

7. The next issue in this appeal of assessee is as regards to adhoc disallowance of 20% of repair & maintenance and depreciation expenses amounting to Rs.2,34,464/-.

7.1 We have heard Id. Senior DR and gone through facts and circumstances of the case. We noted that the AO during the course of assessment proceedings disallowed personal element on account of repair and maintenance expenses and depreciation of car at 20%. The assessee has claimed repair & maintenance expenses and depreciation on car in Profit & Loss account amounting to Rs.4,01,258/- & Rs.7,71,063/- and the AO disallowed 20% of the same at Rs.2,34,464/-. The CIT(A) also confirmed the disallowance. Aggrieved, now assessee is in appeal before the Tribunal.

7.2 We noted that the disallowance made by the AO and confirmed by the CIT(A) at 20% appears to be unreasonable. The assessee's counsel before CIT(A) requested for restriction of disallowance at 5% because in depreciation there cannot be any disallowance. We noted the fact that the AO has disallowed on account of depreciation also which is not as per law. Hence, we restrict the

disallowance on both counts at 10% and direct the AO accordingly.
This issue of assessee's appeal is partly allowed.

8. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the court on 4th April, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 4th April, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |