

**IN THE INCOME TAX APPELLATE TRIBUNAL A BENCH, PUNE**

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER  
AND  
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**ITA No. 983/PUN/2016**  
(Assessment Year: 2008-09)

Shri Jayant Vanechand Vasa                      The Income Tax Officer, Central  
Hemangini Palace                                      Kolhapur  
Opp. Chankyapuri Garden                      Vs.  
S.T. Colony, Vishrambag  
Sangli

PAN – AAOPV2392L

**Appellant**

**Respondent**

Appellant by:        Shri Kishore B Phadke  
Respondent by:      Shri S.P. Walimbe

Date of Hearing:                      25.04.2022  
Date of Pronouncement: 28.04.2022

**ORDER**

**Per S.S. Godara, JM**

This assessee's appeal for AY 2008-09 is against the CIT(A) 11, Pune's order dated 29.02.2016 passed in case No. Pn/CIT (A)-11/ITO(C), Kop/316,318, 320, 321 &322/2015-16 involving proceedings under Section 143(3) r.w.s. 153(A)(b) of the Income Tax Act, 1961 in short the Act.

Heard both the parties. Case file perused.

2. The assessee pleads the following substantial grounds in the instant appeal: -

*"1. Learned CIT Appeal has erred in facts & in law in confirming addition in respect of Money Lending Interest, of Rs.417350/-.*

*a. In spite of the fact that such money lending interest estimated by A.O. as well as by CIT Appeal is never received by the appellant and the addition is made purely by doing guesswork and estimate.*

*b. In spite of the fact that there is no finding of fact or contrary evidence against the appellant either in the seized material or otherwise, to support the addition made by A.O. or by CIT (A) continued.*

- c. *In spite of the fact that the major money lending advance given to Mr. Kalele is not recoverable because of his death and this facts was brought to the notice of the CIT Appeal, Kolhapur with evidence, that is death certificate.*
  - d. *Learned CIT (A) has erred in fact while confirming addition of money lending advances without giving telescoping benefit for excess cash income declared, because if it is assumed as held by CIT(A) that assessee appellant has received money lending interest then to that extent excess cash income declared will be reduced by telescoping.*
  - e. *Learned CIT Appeal has erred in facts & in law and in the circumstances of the case in confirming and recasting the addition in respect of unexplained investments in the construction of residential house without appreciating the fact that the expenditure incurred after 31.3.2004 is on the basis of evidences.*
2. *Learned CIT Appeal has erred in facts & in law in confirming disallowance of work in progress of Rs.3907396/-, u/s 40A(3) without appreciating fact that no deduction is claimed of the expenditure so incurred which is shown as work in progress.*
  3. *Learned CIT Appeal has erred in facts & in law in confirming disallowance of work in progress without appreciating fact that work in progress is not turnover & hence the deduction is not claimed because the project was at very initial stage.*
  4. *The appellant craves to leave, add / amend or alter any other grounds of appeal.”*

3. Learned counsel states very fairly at the outset that this tribunal's recent common order dated 06.04.2022 in assessee's appeal ITA Nos 977 – 988/Pun/2016 for AYs 2022-03 to 2007-08 has already decided the former issue of money lending interest addition hereinabove in Revenue's favour. We thus adopt judicial consistency and reject assessee's instant former substantive ground.

4. Next comes the assessee's second substantive ground that both the lower authorities have erred in law and in facts in invoking Section 40A(3) cash payment disallowance of Rs.39,07,396/- in the course of assessment framed on 31.12.2009 as upheld in the CIT(A)'s order. The assessee's first and foremost contention is that it had not even claimed the impugned expenditure in the P & L Account as this cash payment formed part of current asset schedule only. Learned DR relied on Attar Singh Gurmukh Singh vs. ITO (1991) 191 ITR 667 (SC) explaining the purpose and scope of the impugned statutory provision. The assessee has filed his detailed paper book running into 63 pages comprising of its P & L Account, capital account

as well as balance sheet on 31.03.2008 wherein it had even not claimed these cash payments as revenue expenditure. Faced with these peculiar facts, we hold that the impugned disallowance made for cash payment only for an unclaimed expenditure is not sustainable. The same stands deleted.

No other ground has been raised before us.

5. This assessee's appeal is partly allowed in above terms.

Order pronounced in the open court on 28<sup>th</sup> April, 2022.

Sd/-  
**(Dipak P. Ripote)**  
**Accountant Member**

Sd/-  
**(S.S. Godara)**  
**Judicial Member**

Pune, Dated: 28<sup>th</sup> April, 2022

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -11, Pune*
4. *The Pr.CIT - (Central), Pune*
5. *The DR, "A" Bench, ITAT, Pune*

*By Order*

//True Copy//

*Assistant Registrar*  
*ITAT, Pune Benches, Pune*

n.p.