

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 237/Asr/2017**  
Assessment Year: 2012-13

Sh. Chander Mohan Mehra  
211, Lawrence Road,  
Shastri Nagar, Amritsar

[PAN: AHMPM 0561B]

**(Appellant)**

Vs. Smt. Shashi Handa  
Income Tax Officer,  
Ward-4(1), Amritsar

**(Respondent)**

Appellant by : Sh. A. R. Dogra, Adv.  
Respondent by: Sh. Satbir Singh, Sr. DR

Date of Hearing: 23.02.2022  
Date of Pronouncement: 02.03.2022

**ORDER**

Per Dr. M. L. Meena, AM:

This appeal has been filed by the Assessee against the impugned order dated 16.02.2017 passed by Ld. Commissioner of Income Tax (Appeals)-2, Amritsar, in respect of the Assessment Year 2012-13.

2. The assessee has raised the following grounds of appeal:

- “1. *The Learned C.I.T (Appeals) 2, Amritsar is not justify both on facts and law in confirming the addition of Rs.503182 being disallowances of interest paid on loans to parties. The reasons for not charging interest from parties*

*have been duly explained with documentary evidences as most of such parties were part of appellant's proprietary concern. Entire reasons have been explained for not charging interest from such parties vide letter dated 15-02-2017 along with copies of evidence such as Partnership Deed, Copies of capital accounts of appellant from the books of Shree Balaji Yarn and Textiles and also to whom advances have been given to set up business unit for purchase of land.*

2. *The addition of Rs.503182 is not called for keeping in view the entire position of the case as we have also not paid interest to persons on loan from whom amounts have been taken and if the same yard stick is applied there will be very little balance amount from whom either interest has not been charged or paid. In order to meet the end of natural justice the same yard stick should be applied in the case as whole.*
3. *The addition made is needs to be deleted to meet the end of justice.*

**3.** Briefly, facts as per record are that during the course of assessment proceedings the AO observed that the assessee has played in advance of Rs 8700,000/- interalia for purchase of properties and for investment in capital of M/s Shree Balaji Yarn & Textiles which was not related to the business of the appellant and that the appellant had unsecured loan of Rs 29,76,000/- from Sh Chandra Mohan Mehra, HUF which was interest free. Therefore, the appellant had made the advance of Rs Rs 57,24,000/- (87,00,000 - 29,76,000) out of interest bearing loans. As the advance made at Rs 57,24,000/- was much more than the capital and interest free funds available with the appellant and accordingly, interest of rupees 503182/- being paid on unsecured loans to another person's. Thus, the A.O has disallowed the interest of Rs.503182 paid to the parties from whom loans/advances have been raised, giving reasons that a sum of Rs.8700000/- have been given to parties interest free for non-business purposes.

4. Being aggrieved, from the assessment order, the appellant filed an appeal before the Ld. CIT appeal who has confirmed the addition inter alia observing vide para 5(iii) as under:

*“(iii) The ground of appeal no. 2 is against the addition of Rs 203,182/- on account of disallowance of interest paid to parties for business purposes. The AO observed that the assessee had made interest free advances of Rs 2400,000/-, Rs 250,000/-, Rs 250,000/-, Rs 250,000/-, Rs 250,000/-, Rs 500,000/- and Rs 4800,000/- to Sun Spinning Mills P Ltd, Charan Singh Chawla, Dayal Singh, Didar Singh, Harbhajan Singh, Satnam Kaur and Shree Balaji Yarn and Textile respectively. On the other hand the assessee paid interest of Rs 503,182/- as interest on unsecured loans and advances. The said advances were **given for the purchase of property and starting of new business** and submitted the copies of purchase/sale deeds before the AO. The copy of partnership deeds in respect of M/s Shree Balaji Yams and Textiles was also filed before the AO.*

*The AO held that the advances were given for the purchase of property which is not related to the present business of the assessee. That the investment in the properties was much more than the capital of the assessee. If the advances of Rs 8700,000/- were not given the assessee did not have need to raise any new unsecured loans from others for which interest of Rs 503,182/- was paid. Accordingly the AO invoked the decision of hon'ble Punjab and Haryana High Court in the case of Abhishek Industries 286 ITR 1 and disallowed the interest of Rs 503,182/-.*

*In the written submission filed in appeal proceedings it was stated that the appellant had unsecured loans of Rs 61,16,576/- which included interest free unsecured loan of Rs 29,76,000/- from. Chander Mohan Mehra HUF. The appellant had not paid any interest on unsecured loan taken from Chandra Mohan Mehra, HUF amounting to Rs 29,76,000/- and therefore the interest had been paid on the balance unsecured loan of Rs (61,16,576 - 29,76,000) = Rs 31,40,576/-only.*

*That Sh Chander Mohan Mehra had given Rs. 24,00,000/- plus Rs 24,00,000/- to become partners in another firm Shree Balaji Yarn & Textiles in support of which the copy of partnership deed was filed before the AO. Similarly amount of Rs 1500,000/-, i.e. Rs (250,000 + 250,000 + 250,000 + 250,000+ 500,000) was paid as advance for purchase of land for setting up business unit. Therefore the actual position was as under:-*

(a)	Total amount on which interest not charged	Rs 87,00,000/-
	Lesss Amount withdrawn for capital investment as partner	
		<u>(-) Rs 72.00.000/-</u>

*in Shree Balaji Yarn & Textiles*

*Amount on which interest chargeable but not charged Rs.15,00,000/-*

(b)	Total unsecured loan	Rs.61,16,576/-
	Less- Amount on which interest not paid	<u>(-) Rs.29,76,000/-</u>
	Amount on which interest paid =	Rs.31,40,576/-

*Therefore the amount on which the interest was chargeable if any is only Rs 1500,000/- against the amount of Rs 29,76,000/- on which interest payable but not paid. The difference between the two is Rs (29,76,000 - 1500,000) = Rs 14,76,000/-.*

*Decision:-* *The appellant had claimed that Sh Chander Mohan Mehra had given amounts of advance of Rs 48,00,000/- plus Rs.24,00,000/- to become partners in another firm Shree Balaji Yarn & Textiles in support of which the copy of partnership deed was filed before the AO. Similarly amount of Rs 1500,000/-, i.e. Rs (250,000 + 250,000 + 250,000 + 250,000+ 500,000) was paid as advance for purchase of land for setting up business unit.*

*However the appellant had given interest free advances of Rs 000/- to Shree Balaji Yarn & Textiles to become partner therein which cannot be said to be the business purpose of the appellant. Moreover as per the list of advances given, the appellant had advanced Rs 2400,000/- to Sun Spinning Mills Pvt. Ltd and not to Shree Balaji Yarn & Textiles. The investment of Rs 48,00,000/- by the appellant as his capital in the Firm M/s Shree Balaji Yarn & Textiles is in the nature of his personal investment, which is not connected with the business of the appellant in his individual capacity. The appellant had therefore not explained the business expediency of giving the advance of Rs 4800,000/- to M/s Shree Balaji Yarn & Textiles.*

*The appellant had not furnished evidence to show that the advance of Rs 1500,000/-, i.e. Rs (250,000 + 250,000 + 250,000 + 250,000+ 500,000) was paid as advance for purchase of land for setting up business unit. The business expediency of the said advance of Rs 1500,000/- is not proved i.e. for purchases of properties not connected with the business of the appellant.*

*Accordingly the AO was justified in holding that the advance of Rs 8700,000/- for interalia for purchase of properties and for investment in capital of M/s Shree Balaji Yarn & Textiles was not related to the business of the appellant. As against this advance, the appellant had unsecured loan of Rs 29,76,000/- from Sh Chandra Mohan Mehra, HUF which was interest free. Therefore the appellant had made the advance of Rs (87,00,000 - 29,76,000) = Rs 57,24,000/- out of interest bearing loans as the advance made at Rs 57,24,000/- was much more than the capital and interest free funds available with the appellant.*

*Therefore the disallowance of proportionate interest of Rs 503,182/- is confirmed.”*

5. The Ld. Counsel for the assessee submitted that the case has been discussed and explained before the A.O, However, the A.O has disallowed the interest of Rs.503182 paid to the parties from whom loans/advances have been raised, giving reasons that a sum of Rs.8700000/- have been given to parties' interest free for non-business purposes. The same finding is confirmed by the CIT (Appeal). The Id. DR has explained the case with the support of documentary evidences in the form of brief synopsis and a paperbook of 31 pages which are placed on record. The relevant part of the submissions is reproduced hereunder:

*“In connection with above, my humble submissions are as under:-*

*Hearing of the above appeal case has been fixed on 21-12-2021. The undersigned counsel of the appellant is out of Amritsar due to ill health at Palampur (H.P). However, the entire details including Paper Book have been furnished before and during the time of hearing of appeal from time to time. Paper Book Contain 1 to 31 pages and also letters dated 04-03-2019 and 13-05-2019.*

The details and nature of Rs.8700000/- are as under:-

Sun Spinning Mills Pvt. Ltd. Rs.2400000:

This amount was given as under:

01-04-2010	Rs. 1650000
02-08-2010	<u>Rs.750000</u>
	<u>Rs.2400000</u>

The said amount has not been given during the year under reference. The amount has been given through cheque to Shree Balaji Yarns and Textiles for the purchase of factory land in which appellant was one of the partners. It is clear that the amount does not pertain to this year under appeal and has been given for the purpose of business expansion. The copy of account from the books of Shree Balaji Yarns and Textiles is enclosed for the period 01-04-2010 to 31-03-2011 is enclosed.

**Rs.4800000:-** This amount has also been given to Shree Balaji Yarn & Textiles in which Shri Chander Mohan (Appellant) is partner. Copy of account enclosed. It may be stated that Shri Chander Mohan Mehra is proprietor of Sahil Textiles.

**Rs.1500000:** This amount has been given for purchase of land for factory establishment. This matter/deal could not be finalized.

Now, the entire position is as under:-

The Total Amount	Rs.8700000
Less: Pertain to business but does not relate to this year	<u>Rs.2400000</u>
	Rs.6300000
Less: Given for business purposes during the year	<u>Rs.4800000</u>
	Rs.1500000

Less: Given out of interest free loan from Chander Mohan Mehra HUF  
Rs.2976000

Surplus amount in hand Rs.1476000

Further as per letter dated 13-05-2019 on record. The details of parties to whom interest paid are as under:-

	Amount	Interest Paid
Old	Rs.2460654	Rs.329186
Fresh	<u>Rs.1900000</u>	<u>Rs.173996</u>
	<u>Rs.4360654</u>	<u>Rs.503182</u>

That even if the fresh loans and advances considered the position shall be as under:-

Total Fresh Loans Rs.1900000

Less: Interest free loan taken during the year  
(Amount available 2976000-1500000) Rs.1476000

Rs.424000

In the worst position the **interest on Rs.424000 can be disallowed.**

There is no negative capital as alleged by the A.O and CIT (Appeals). The detail of capital is as under:- Total Debtors (As per Balance Sheet) Rs.8700000

Less-Loans and advances (As per Balance Sheet) Rs.6116576

Rs.2583424

Less- Capital (As per Balance Sheet) Rs.3078882

Surplus amount of capital Rs.495458

The various decisions of Hon,able Courts are also referred in support of case as under:-

**Deputy Commissioner of income Tax vs Core Health Ltd. (2008) 298 ITR 194(SC):**

**It was held-** Section 36(i)(iii) of The Income Tax Act, 1961 has to be read on its own terms. It is a code by itself. It makes no distinction between money borrowed to acquire a capital asset or a revenue asset. All that the section requires is that the assessee must borrow capital and the purpose of borrowing must be business.

**S. A Bulders Ltd. vs Commissioner of Income Tax (Appeals) and another (2007) 288 ITR 1(SC):**

**It was held-** Once it is established that there was nexus between the expenditure and the purpose of business (which need not necessarily be the business of the assessee itself), the revenue cannot justifiably claim but put itself in the arm-chair of the business or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. What is relevant is whether the assessee advanced such amount to its sister concern as a measure of commercial expediency.

**Commissioner of Income Tax vs Reliance Industries Ltd (2019) 307 CTR (SC) 121:**

**It was held-** The interest free loan funds available to assessee were sufficient to meet its investment, it could be presumed that loans were given to subsidiaries out of interest free funds and interest referable to funds given to subsidiaries as deduction under section 36(i)(iii).

*In view of the above facts, material on record and law, the necessary relief may kindly be given.”*

**6.** Per contra, the learned additional CIT DR stands by the impugned order.

**7.** Having heard the rival contentions, perusing the material on record, the synopsis and paper book filed by the assessee, we observe that the appellant had funds to advance for purchase of properties and for investment in capital of M/s Shree Balaji Yarn & Textiles as explained before us with the support of statement of accounts and documentary evidences. We further observe that the AO and the Id. CIT (A) are factually wrong in observing that amount of advance of Rs 57,24,000/- (87,00,000 - 29,76,000) was made by the assessee out of interest bearing loans for non business purpose. The Ld AR contended that ₹ 24 lakhs has been given by cheque to see Balaji yarns and textiles for the purchase of factory land where appellant was one of the partners. Thus, the amount was given for the purpose of business expansion and being paid in the year 2010-11, is not pertaining to the year under appeal. Again, which would tear clicks has been given to see Balaji Yarn and textiles and restriction removal appellant is partner. Likewise, ₹ 15 lakhs has been given for the purchase of land for factory establishment, however the deal could not finalised.

**8.** Considering the facts in totality regarding the interest-free funds available with the assessee, amount advanced which does not relate to the year under appeal, the fresh loan and advances as per the computation statement of the assessee as above, and Judgements cited, in our view, an interest could be disallowed on amount of rupees 4,24,000/- in light of the principles of business expediency. Accordingly, we direct the assessing

officer to restrict the disallowance of interest on Rs. 4,24,000 as against Rs 57,24,000/-, towards advances made by the assessee out of interest-bearing loans.

9. In the backdrop of the discussion, the appeal of the assessee is allowed in the terms indicated as above.

*Order pronounced in the open court on 02.03.2022*

**Sd/-  
(Anikesh Banerjee)  
Judicial Member**

**Sd/-  
(Dr. M. L. Meena)  
Accountant Member**

Date: 02.03.2022

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

True Copy  
By Order