

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH "A" KOLKATA**

Before Shri Manish Borad, Accountant Member and
Shri Sonjoy Sarma, Judicial Member

आयकर अपील सं.य/ ITA No.1851/Kol/2019 Assessment Year:2014-15
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Income Tax Officer Ward 35(3), Kolkata R.No. 816, 8 th Fl., Aaykar Bhawan Poorva,110 Shantipally, EM Bypass, Kolkata- 700 107.	बनाम V/s.	Shri Laxmipat Surana 12 Bornefield Lane, Kolkata-700 001
PAN: AKQPS 7037P		
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Anil Kochar & Shri Aryan Kochar, Advocates, Ld.AR
प्रत्यर्थी की ओर से/By Respondent	Shri Biswanath Das, Addl. CIT, Ld.DR
सुनवाई की तारीख/Date of Hearing	05-05-2022
घोषणा की तारीख/Date of Pronouncement	24 -05-2022

आदेश /O R D E R

PER MANISH BORAD, AM.

This appeal of the revenue for the assessment year 2014-15 is directed against the order of Id. Commissioner of Income-tax (Appeals)-10, Kolkata dated 24-09-2017 and is arising out of the

assessment order framed u/s. 147/143(3) of the Income Tax Act dated 25.3.2015 passed by Income Tax Officer (ITO), Ward-35(3), Kolkata.

2. The registry has informed that there is a delay of 03 days in filing the present appeal by the revenue. The application for condonation of delay has been filed by the revenue explaining each day of delay. On perusal of the same, we find that the delay was not wilful on the part of the revenue. We, therefore, condone the delay and admit the appeal for adjudication.

3. The revenue has raised the following grounds of appeal:-

1. That on the facts and circumstances of the case, the Ld. CIT(A) erred in allowing relief to the assessee by deleting the entire interest expenses on secured loans amounting Rs.3,55,54,116/-.

2. The appellant craves the leave to make any addition, alteration, modification of grounds at the appellate stage.

4. Brief facts of the case are that the assessee is an individual and engaged in the business of property developer. The assessee filed its return of income for the AY 2014-15 on 31-03-2015 declaring total income Nil. The case was selected for scrutiny followed by service of notices issued u/s. 143(2) and 142(1) of the Act. During the assessment proceedings the Ld.AO observed that bank interest of Rs.3,55,54,116/- was not paid before the due date of filing of return of income. Accordingly, the same was disallowed u/s. 43B of the Act.

The Ld. AO also made the disallowance of Rs.1,07,15,143/- u/s. 40(a)(ia) of the Act for non deduction of tax at source on the interest expenses. Ld.AO assessed income at Rs.4,62,83,270/-.

5. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) confirmed the disallowance made u/s.43B of the Act and allowed the other grounds raised on the issue along with claim of depreciation. Subsequently, the Ld. CIT(A) passed rectification order u/s. 154 on 28-03-2019 of the Act for rectifying the apparent mistake made in the order passed u/s. 250 of the Act dt. 24-09-2017. Against this, the revenue is in appeal solely on the issue of deletion of disallowance u/s. 43B of the Act for unpaid Bank interest amounting to Rs.3,55,54,116/-.

6. The Ld. Departmental Representative submitted before us that the amount of interest on secured loans of Rs.3,55,54,116/- was not paid by the assessee during the FY 2013-14 and was even not paid before the due date of filing of the return of income. Therefore, the same is hit by provisions of section 43B of the Act and the Ld. AO has rightly made the said disallowance.

7. Per contra, the Ld. Counsel for the assessee submitted before us that out of the total bank interest payable at Rs.3,55,54,116/-, which was not paid by the assessee, only a sum of Rs. 54,07,493/- has been claimed by the assessee in the P & L account and remaining amount of Rs. 3,01,46,623/- has been transferred to pre-operative expenses and shown in the asset side of the balance sheet

and, therefore, disallowance u/s. 43B of the Act cannot exceed Rs.54,07,493/-.

8. We have heard the rival contentions and perused the records placed before us. The revenue's grievance is that the Ld. CIT(A) erred in deleting the disallowance made u/s. 43B of the Act for unpaid bank interest on secured loans of Rs. 3,55,54,116/-. We find that so far as amount of bank interest payable on the secured loans is concerned, there is no dispute. As far as invoking of provisions of section 43B is concerned, if an assessee claims certain deductions against revenue/income and, If such deductions include any bank interest payable to schedule bank on secured loan, the same is allowable only if it is actually paid. The assessee gets liberty if, in case, interest is not paid during the FY in which the assessee claims, but paid before the due date of filing of return u/s. 139(1) of the Act.

9. Before us, on the basis of submissions made by the Ld. Counsel for the assessee as well as the comments of the Ld.AO, forming part of statement of facts, we find that out of total alleged amount of Rs. 3,55,54,116/- the assessee has only claimed interest expenses of Rs. 54,07,493/- in its P & L account and remaining amount of Rs. 3,01,46,623/- has been shown as pre-operative expenses and assessee has not claimed this expenditure. We find that so far as interest of Rs.54,07,493/- is concerned undisputedly since the same has been claimed in the P & L account, but not paid by the assessee during the financial year 2013-14 and even not before the due date of filing of return u/s. 139(1) of the Act, the same deserves to be

disallowed u/s. 43B of the Act and thus, the disallowance to this extent at Rs.54,07,413/- is confirmed. But, for the remaining amount since the assessee is not claiming deduction in the P & L account and showing it as pre-operative expenses, we confirm the finding of Ld. CIT(A) deleting the disallowance. However, we direct the revenue authorities to take note of this fact that in subsequent years if the assessee claims the Bank interest transferred to pre-operative expenses as an expenditure in the P & L account, the same can be allowed only if the assessee is able to prove with documentary evidences that the said bank interest on secured loans has actually been paid.

10. In the result, the appeal of the revenue is partly allowed as per the terms indicated hereinabove.

The order pronounced in the open Court on 24 .05.2022

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Dated : 24th May, 2022

**PP/SPS

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

- 1.अपीलार्थी/Appellant/Revenue: Income Tax Officer, Ward 35(3), Kolkata R.No. 816, 8th Fl., Aaykar Bhawan Poorva,110 Shantipally, EM Bypass, Kolkata-700 107.
 2. प्रत्यर्थी/Respondent/Assessee: Shri Laxmipat Surana, 12 Bornefield Lane, Kolkata-700 001
 3. संबंधित आयकर आयुक्त / Concerned CIT
 4. आयकर आयुक्त- अपील / CIT (A)
 5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
 6. गार्ड फाइल / Guard file.
- By order/आदेश से,

/True Copy/

Assistant Registrar
ITAT, Kolkata