

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
ITA No. 4210/Mum/2019 (A.Y. 2009-10)

Sh. Neeraj Nath

Plot No. 53, Sector-21,  
Nerul, Navi Mumbai-400706

**PAN: AABPN6775A**

..... Appellant

Vs.

The ITO-28(2)(3),  
Room No. 331, 3<sup>rd</sup> Floor,  
Tower No.6, Vashi Station Complex,  
Navi Mumbai-400703.

..... Respondent

Appellant by : Sh. Rajesh Shah  
Respondent by : Sh. Indira Adakil, CIT-DR  
Date of hearing : 11/04/2022  
Date of pronouncement : 07/07/2022

ORDER

**PER GAGAN GOYAL, A.M:**

This appeal by the assessee is directed against the order of Ld. Commissioner of Income Tax (Appeals)-26, Mumbai [hereinafter referred to as 'the CIT (A)'] dated 13.05.2019 for the Assessment Year (AY) 2009-10. The assessee has raised the following grounds of appeal:

	Grounds of appeal	Tax effect relating to each Ground of Appeal (see note below)
1	On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming disallowance of interest of Rs. 10,44,245 though	3,16,406

	the said interest was paid for loan used for giving loan and there was a direct nexus between loan taken and utilization.	
2	On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming disallowance of Rs. 10,44,245 being interest paid for the loan against interest income without fully appreciating the facts of the case.	3,16,406
3	On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming disallowance of Rs. 20,892 being 10% of the expenses incurred amounting to Rs. 2,08,913 on ad-hoc basis.	6,330
4	The appellant craves leave to add, amend, modify, substitute and/or cancel any of the grounds of appeal.	
	Total tax effect (see note below)	3,22,736

2. Brief facts of the case are that the assessee has e-filed his return of income for AY 2009-10 on 22.09.2009 declaring total income of Rs. 5,78,060/-. The case was selected for scrutiny and scrutiny assessment was completed under section 143(3) dated 09.12.2011 assessing total income at Rs. 29,74,679/-.

3. Being aggrieved, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) dismissed the appeal of the assessee stating that assessee furnished additional evidence by nature but did not made any request to add the same as additional evidences as required under the rule 46A of the Income Tax Rules. Being aggrieved, the assessee and revenue filed appeal before the Hon'ble ITAT, The Hon'ble ITAT vide order dated 30.11.2015 set aside the order of Ld. CIT(A) and restored the entire matter back to the file of the AO for deciding the entire matter afresh after considering the additional evidences so filed by the assessee before the Ld. CIT(A). Following the directions of the Hon'ble ITAT, an opportunity of being heard was given to the assessee vide letter dated

07.06.2016, 27.07.2016, 16.08.2016 & 17.10.2016. The M/s MSU & Co., AR of the assessee, filed the submissions vide letter dated 11.08.2016 and 26.10.2016 and same were perused and decided on the basis of the submissions.

4. Ground Nos. 1 & 2 are interrelated, hence, disposed of by a common finding. During the year under consideration, assessee taken a housing loan of Rs. 79.5 Lakhs from ICICI Bank. This amount of loan, assessee never used for the purposes of buying a house rather the funds on the said loan were utilized in giving loan to the Mrs. Preeti Nath for purchase of land by her. The total amount given to Mrs. Preeti Nath was amounting to Rs. 78.82 Lakhs.

5. This loan given to Mrs. Preeti Nath was chargeable to interest and assessee received interest to the tune of Rs. 12.6 Lakhs. In addition to this interest assessee earned other interest income of Rs. 14,491/-. Interest paid by the assessee on so-called housing loan is amounting to Rs. 10,46,245/-.

6. We have gone through the sanction-cum-disbursement document furnished by assessee on page no.5 to 8 of the Paper Book (PB) along with Loan A/c statement furnished vide page no. 12 to 24 of PB and assessee's own bank account vide page no. 25 to 27 of PB (reflecting funds transfer to Mrs. Preeti Nath).

7. We have gone through the order of AO under section 143(3) r.w.s. 254 of the Act, order of Ld. CIT(A) and assessee's submissions before the authorities below. There is no challenge to the fact that assessee has taken personal loan in the guise of home loan which in turn was being used for further funding of Mrs. Preeti Nath against interest. Both AO and First Appellate Authority ignored the fact that the amount of so-called housing loan was never being used for the

purposes of house purchase rather the same being used to earn the interest. They simply disown the argument of the assessee that sanction letter issued by the ICICI Bank mentioned that it is home loan sanctioned to Mr. Neeraj Nath. The concept of substance over form will apply here and assessee is succeeded in establishing the nexus between the amount of interest earned and interest paid i.e. funds given to Mrs. Preeti Nath out of loan taken from ICICI Bank. We do not have any hesitation in accepting the claim of the assessee under section 57 of the Act resulting in netting of the interest income of Rs. 12,74,491/- against interest incurred of Rs. 10,46,245/-.

**8. In the result, ground nos. 1 & 2 of the assessee is allowed and AO is directed to delete the addition.**

9. **Ground No.3** of the assessee is dismissed as no documentary evidence such as bills/vouchers never produced before the AO. We have gone through the assessment records, order of Id. CIT(A) and Paper Book produced before us. Information submitted by appellant in a tabular form but no supporting bills were produced, hence, disallowance of 10% sustained by Id. CIT(A). Hence, ground No. 3 of the assessee is dismissed.

12. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 7<sup>th</sup> day of July, 2022.

Sd/-

(PAVAN KUMAR GADALE)

JUDICIAL MEMBER

Mumbai, दिनांक / Dated: 07/07/2022

SK, Sr.PS

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि. , मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy. /Asstt. Registrar)  
**ITAT, Mumbai**