

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH
MUMBAI**

**BEFORE: SHRI VIKAS AWASTHY, JUDICIAL MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.235/Mum/2021
(Assessment Year :2014-15)**

Shri Premji Thaver Shah 31, 4 X 4, C/o. Prince Paper Corporation, Shastri Nagar Irla, Vile Parle (W) Mumbai – 400 056	Vs.	CIT(A)-53, Mumbai Room No.634, 6 th Floor Aayakar Bhavan Maharishi Karve Road Mumbai – 400 020
PAN/GIR No.AADPS7856B		
(Appellant)	..	(Respondent)

Assessee by	Shri Vishwas Mehendale
Revenue by	Shri Vachashpati Tripathi
Date of Hearing	06/07/2022
Date of Pronouncement	12/07/2022

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.235/Mum/2021 for A.Y.2014-15 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-53, Mumbai in appeal No.CIT(A), Mumbai-53/10107/2019-20 dated 31/12/2020 (Id. CIT(A) in short) against the order of assessment passed u/s.147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 08/12/2019 by the Id. Asst. Commissioner of Income Tax, Central Circle-5(2), Mumbai (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the disallowance of Rs.5,30,686/- on account of interest disallowance in the facts and circumstances of in the instant case.

3. We have heard rival submissions and perused the materials available on record. The assessee is an individual and had electronically filed its return of income for the A.Y.2014-15 on 26/11/2014 declaring total income of Rs.13,82,310/-. The original assessment was completed u/s. 143(3) of the Act on 28/09/2016 assessing total income at Rs.13,82,310/- Later the assessment was sought to be reopened by issuance of notice u/s.148 of the Act on 29/03/2019. The assessee filed return of income on 06/11/2019 in response to notice u/s.148 of the Act declaring total income of Rs.13,82,310/- and requested to provide reasons recorded for reopening the assessment which were duly provided by the Id. AO vide letter dated 09/11/2019. The validity of re-assessment is not under challenge before us by the assessee. During the course of re-assessment proceedings, the Id. AO observed that the assessee had paid interest on unsecured loans to the extent of Rs.16,03,520/- on the loans borrowed by him. On the other hand, the assessee had given interest free loans and advances of Rs.63,16,175/- to its sister concern M/s. Symbolic Developers Pvt. Ltd., Accordingly, the Id. AO proceeded to disallow the proportionate interest on the borrowed funds and disallowed the sum of Rs.5,30,686/- in the assessment. This action was upheld by the Id. CIT(A).

3.1. It is not in dispute that the assessee is a proprietor of M/s. Amar Enterprises. It is not in dispute that assessee had formed a private limited company in the name of M/s. Symbolic Developers Pvt. Ltd., in which the assessee holds 45% of voting rights. The said company had bought the

disputed tenant property called Joseph Mansion which was subject matter of re-development and re-construction. The said company was in requirement of funds for purchase of rights from the landlord for the said property and also to put the expertise to resolve the disputes of the disputed property. Accordingly, it was submitted that the Directors of the said company had agreed that the assessee would provide advance upto Rs.1,00,00,000/- as and when required in regard to tenanted property and assessee would be compensated by way of profit share of 2% in the project of re-development and re-construction. Hence, it was submitted by the Id. AR that the advance was made by the assessee to its sister concern during the course of its business. The Id. AR placed reliance on the decision of the Hon'ble Supreme Court in the case of SA Builders Ltd., vs. CIT reported in 288 ITR 1 among others.

3.2. It is a fact that assessee had advanced loans to its sister concern M/s. Symbolic Developers Ltd., wherein assessee is holding 45% voting share. The purpose of assessee advancing loans to the said sister concern has been elaborated above and the said fact has not been disputed by the Revenue. Hence, it could be safely concluded that the advance made by the assessee to its sister concern was only to protect the business interest of the assessee and to protect its controlling stake in the said company. Hence, the lending need to be construed as amounts advanced during the course of business, even if the borrowed funds have been utilised for the same. Hence, the interest paid on such borrowings becomes an allowable deduction in the hands of the assessee and no question of disallowance thereon would arise. Reliance in this regard is placed on the following decisions:-

- (a) Decision of the Hon'ble Supreme Court in the case of SA Builders vs. CIT reported in 288 ITR 1
- (b) Decision of the Hon'ble Calcutta High Court in the case of CIT vs. Rajeev Lochan Kanoria reported in 208 ITR 616

3.3. In view of the aforesaid observations and respectfully following the aforesaid judicial precedents, we direct the Id. AO to delete the addition made on account of interest and accordingly, the grounds raised by the assessee in this regard are allowed.

4. In the result, appeal of the assessee is allowed.

Order pronounced on 12/07/2022 by way of proper mentioning in the notice board.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 12/07/2022
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai