

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 5641/MUM/2019
(ASSESSMENT YEAR: 2010-11)

Income Tax Officer-3(2)(4), Mumbai,
Room No. 673, 6th Floor,
Aayakar Bhawan, M.K. Road,
Mumbai - 400020

..... Appellant

M/s Patodia Syntex Limited,
Raheja Chambers, 213,
Nariman Point,
Mumbai - 400021
[PAN: AAACP4751E]

Vs

..... Respondent

CO No. 21/MUM/2021
(Arising out of ITA No. 5641/MUM/2019)
(ASSESSMENT YEAR: 2010-11)

M/s Patodia Syntex Limited,
Raheja Chambers, 213,
Nariman Point,
Mumbai - 400021
[PAN: AAACP4751E]

..... Appellant

Vs

Income Tax Officer-3(2)(4), Mumbai,
Room No. 673, 6th Floor,
Aayakar Bhawan, M.K. Road,
Mumbai - 400020

..... Respondent

Appearances

For the Department : Shri B.K. Bagchi
For the Assessee : Shri S.L. Jain

Date of conclusion of hearing : 27.04.2022
Date of pronouncement of order : 20.07.2022

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal filed by the Revenue and Cross-Objection filed by the Assessee arise from the order of the Learned Commissioner of Income Tax (Appeals)-8, Mumbai [hereinafter referred to as 'the CIT(A)'], passed on 13.06.2019 for the Assessment Year 2010-11, which in turn arose from the Assessment Order, dated 30.10.2015, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'].
2. The Ground raised by the Revenue in the Appeal are as under:
 1. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was right in deleting the disallowances of Rs. 29,87,028/- made on account of accrued interest on loan advanced to M/s. Shree Janardhan Mills Ltd. without appreciating that the books of accounts of the assessee are maintained as per mercantile system of accounting and as per mercantile system of accounting, the assessee company ought to have provided the interest on accrual basis on the said loan and should have been credited to the Profit & Loss Account and was required to offer the accrued interest for taxation*
 2. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was right in deleting the disallowances of Rs. 29,87,028/- made on account of accrued interest on loan advanced to M/s. Shree Janardhan Mills Ltd. without appreciating that the assessee Company has advanced loan of Rs. 1,22,66,737/- since 2007-08 and the amount of Rs. 29,87,028/- was accrued to the assessee on the said loan for F.Y. 2009-10 where the assessee did not offer the interest on accrual basis*

3. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was right in deleting the disallowances of Rs. 29,87,028/- made on account of accrued interest on loan advanced to M/s. Shree Janardhan Mills Ltd. without appreciating that during the course of assessment proceedings assessee stated that the funds were advanced to associate Company to meet the business expediencies and in consideration to save the market goodwill of the assessee*
 4. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was right in deleting the disallowances of Rs. 29,87,028/- made on account of accrued interest on loan advanced to M/s. Shree Janardhan Mills Ltd. by placing reliance on the decision of Hon'ble Bombay High Court in the case of Neo Solution Pvt Ltd 387 ITR 667 without appreciating that the said decision rendered on different sets of fact and cannot be applied squarely in this case*
 5. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in deleting the disallowances of Rs. 29,87,028/- made on account of accrued interest on loan advanced to M/s. Shree Janardhan Mills Ltd. when the assessee company had failed to waive the interest either which is very well reflecting in its books of accounts*
3. In the Cross-Objection, the Assessee has supported the order passed by the CIT(A) on the following grounds:
- “1. Ld. CIT(A) erred in upholding validity of notice u/s 148, without considering the fact that belief was merely based on pre-existing material on record and not based on any substantial, eligible, fresh material received by Ld. AO after completion of assessment. It is a mere change of opinion.”
 4. The Revenue has raised 5 grounds of appeal all directed against the order of CIT(A) deleting the addition of INR 29,87,028/- made by the Assessing Officer pertaining to

interest on loan advanced by the Assessee to M/s. Shree Janardhan Mills Ltd. While the Cross-Objection raised by the Assessee challenges the validity of re-assessment proceedings initiated on account of mere change of opinion and in absence of any fresh material. We would first take up appeal by the Revenue.

5. The relevant facts, in brief, are that the Assessee filed return of income on 07.10.2010 declaring 'Nil' income under the normal provisions of the Act after claiming set off of unabsorbed brought forward losses to the extent of income of INR 31,15,979/- and book loss of INR 64,31,767/- under Section 115JB of the Act. The assessment under Section 143(3) of the Act was completed on the Assessee vide order, dated 26.03.2013, at 'Nil' income after setting off of unabsorbed losses of earlier years to the extent of INR 32,43,778/-.

6. The assessment was re-opened subsequently as after examining the notes forming part of accounts for the relevant previous year, the Assessing Officer formed a belief that income has escaped assessment since income being interest on loan of INR 1,22,66,737/- outstanding from M/s. Shree Janardhana Mills Ltd was not offered to tax as income of the relevant previous year. The Assessing Officer noted that the Assessee, though following mercantile system of accounting, had not credited the accrued interest of INR 29,87,028/- to the Profit & Loss Account and therefore, income amounting to INR 29,87,028/- had escaped assessment. Accordingly, notice under Section 148 was issued to the Assessee on 20.03.2015

after recording reasons for reopening assessment. the relevant extract of which read as under:

“Further, from the notes forming part of accounts for the year ended 31.03.2010, it was mentioned at Sr.No.5 of the said notes that, 'loan of Rs. 1,22,66,737/- (include interest accrued thereon Rs 29,87,025/-) due from M/s. Shree Janardhana Mills Ltd is fully secured by way of pari-pasu charge on fixed assets of Shree Janardhana Mills Ltd. Due to uncertainty of recovery of interest, the same has not been provided during the year From the statement, it was clear that the assessee had not credited the accrued interest of Rs.29,87,028/- to the Profit & Loss Account. As per clause 11 of the tax audit report, the method of accounting employed in the previous year was mercantile wherein accrued interest amount required to be credited to the P & L A/c and offered to tax which has not been done. This resulted in under assessment of income of Rs.29.87 lacs.”

7. The Assessee objected to re-opening of assessment vide letter dated 06.08.2015. The relevant extract of the aforesaid letter is as under:

“With reference to the above proceedings, we have honour to submit as under:

1. xx xx

2. *A reference to the above reasons recorded shows that assessment has been reopened on the basis of note to account, being note no.5 as appended to the audited accounts. The said audited accounts were filed during the course of original assessment proceedings as terminated under your assessment order u/s 142/3) dtd. 26.3.13. Thus, there is no new fact which has come into light after completion of the assessment proceedings. It is also submitted that a reference to the accounts for AY 09-10 will show that similar note is appearing, being note no.5 of the accounts for A.Y. 09-*

10. *Ditto similar note is appearing in accounts of A.Y. 08-09 as well as 07 08, being note no.6. In earlier years also, the same fact is disclosed; hence, it is most respectfully submitted that there is no new fact, which has arisen during the year. The fact is in existence for number of years.*

3. *We are enclosing herewith copy of accounts from A.Y. 08-09 to 10-11, which reflects that in none of the years any interest is charged, including in A.Y. 10-11 As not interest is charged, there is no accrued interest as referred in the accounts. Interest accrued of Rs.29,87,028/- relates to earlier years, which was duly offered for taxation in respective years in which such interest was accrued. The figure of accrued interest is also referred in notes to accounts in earlier A.Y.s, as referred hereinabove. Hence it is submitted that it is an error and without investigating the facts the reasons are recorded that interest of Rs.29,87,028/- is accrued to the assessee during the current year, which is not offered for tax. The belief is based on erroneous facts. Your honour is requested to drop the reassessment proceedings.*

4. *It can also be stated here that M/s. Shree Janardhana Mills Ltd has become a BIFR Company and no interest is received by the assessee company in any of these years as referred hereinabove. It is also submitted that capital and free reserves of the assessee company are much higher to the loans advanced. The loans advanced itself has become bad debt and there is no possibility of recovery of the debt.*

5. *Your honour will appreciate that during the year, no new fact has come into existence, which requires taxation of any interest on the loans advanced. Loans were advanced in earlier years; no interest has been charged in earlier years, as the debtor is not capable of making any payment, no interest is received by the appellant till date. Accrued interest of Rs.29,87,028/- as referred in the reasons relates to earlier years. Hence, no interest is accrued during the year.*

6. *In view of above, your honour is requested to drop the reassessment proceedings and oblige. Your honour is also*

requested to pass a speaking order on the objections taken by the assessee and to keep the reassessment proceedings in abeyance for the time being. (Emphasis Supplied)

8. The Assessing Officer, vide order dated 07.09.2015, rejected the objections and proceeded to frame assessment under Section 143(3) read with Section 147 of the Act vide order, dated 31.10.2015 after addition of INR 29,87,028/- holding as under:

"10. It is to be noted that the assessee is following mercantile method of accounting wherein income and expenditure are recorded at the time of their occurrence during the previous year. Thus, where accounts are kept on mercantile basis, the profits or gains are credited, though they are not actually realized and entries, thus, made really show nothing more than an accrual or arising of the said profits at the material time. Hence, when the loan due from M/s. Janardhan Mills Ltd. is outstanding in the books of accounts during the year under consideration, the assessee could have provided for accrued interest on the said loan and should have credited the same to the Profit & Loss Account. However, since the assessee has failed to do so, accrued interest amounting to Rs.29,87,025/- on loan advanced to M/s. Janardhan Mills Ltd. is treated as interest income of the assessee and is accordingly brought to tax and added to the income of the assessee for the previous year under consideration. Penalty proceedings u/s. 271(1)(c) of the Act are initiated for furnishing inaccurate particulars of income and concealing the particulars of income.

The Assessing Officer computed total income under normal provisions of the Act at 'Nil' even after making an addition of INR 29,87,028/- as the same was set-off with the brought forward losses of earlier years, taking the aggregate amount of losses pertaining to earlier years set off during the relevant Assessment Year to INR 62,30,806/- (INR 32,43,778 + INR 29,87,028/-). The Assessing Officer also reduced books loss under Section 115JB of the Act was to INR 34,44,739/- after increasing profits by INR 29,87,028/-.

9. Being aggrieved, the Assessee preferred appeal before CIT(A). The CIT(A) noted that the interest added by the Assessing Officer pertained to an old outstanding loan granted by the Assessee in earlier years to an associate company (i.e., Shree Janardhana Mills which) which was presently a sick company referred to Board for Industrial and Financial Reconstruction (BIFR). Following the judgment of Hon'ble Bombay High Court in the case of Neo Solutions Pvt. Ltd. (387 ITR 667) the CIT(A) deleted the addition of INR 29,87,028/- made by the Assessing Officer holding as under:

"3.2.5 I find that the above decision of Hon'ble Bombay High Court is squarely applicable in the instant case. It is also found that the said company Shri Janardhana Mills Ltd is a sick company which has been referred to BIFR. Still, for a long time, the appellant company kept on offering accrued interest. However, nothing actually really was received by way of interest all through the years. As a measure of last resort, it has now stopped offering accrued interest. It is also stated that if at all, some interest is actually received on liquidation of the company, it goes without saying that the same shall of course be offered to tax. It is also worth-while to mention over here that it is one thing to disallow from interest paid on account of interest-free advances given and completely another thing to add notional interest on accrual basis, particularly when the borrowing company is a BIFR company. There is no judicial support for such type of addition. Respectfully following the Hon'ble Bombay High Court, the addition of Rs.29.87 lakh as accrued interest on loan advanced to Shree Janardhanan Mills Ltd is hereby deleted. This ground of appeal is hereby allowed."
(Emphasis Supplied)

10. Being aggrieved, the Revenue is appeal before us against the order of CIT(A) granting relief to the Assessee on merits by deleting the additions of interest of INR 29,87,028/- whereas the Assessee has filed cross-objections to support the order passed by

the CIT(A) by challenging the re-assessment order on the grounds of jurisdiction.

11. While the Learned Departmental Representative appearing before us reiterated the stand of Revenue as per the Assessment Order, the Learned Authorised Representative for the Assessee relied upon the order passed by the CIT(A) and submitted that no interest has been credited by the Assessee in the books respect of loan outstanding from Shree Janardhanan Mills Ltd from the Assessment Year 2008-09 since it had become a sick company. Identical note regarding uncertainty of recovery of interest has been consistently been put in the financial statements since Assessment Year 2008-09 and no disallowance/addition on account of notional interest has been made since in the assessments framed under Section 143(3) for the Assessment Years 2008-09, 2015-16 and 2016-17 which was selected for scrutiny. Even for the Assessment 2010-11 before us, during the assessment proceedings, the Assessing Officer had examined the issue and had not made any addition on account of interest on loan outstanding from Shree Janardhanan Mills Ltd. In this regard, he relied upon the letter dated 12.08.2010 placed at page 34 of the paper-book.
12. We have considered the rival submission. Having perused the records, we find that the factual averments made by the Learned Authorised Representative of the Assessee are correct. The loan given by the Assessee to Shree Janardhanan Mills Ltd. has been shown as outstanding in the books of account at INR 1,22,66,737/- since Assessment Year 2007-08 and interest income has not been credited in the books of accounts since the Assessment Year 2008-09. Perusal of audited accounts for Assessment Years 2007-08,

2008-09, 2009-10 and 2010-11 show identically worded note has been included in the all which reads as under:

"6. Loan of Rs. 1,22,66,737/- (include interest accrued thereon Rs. 29,87,025/-) due from Shree Janardana Mills Ltd. is fully secured by way of pari-pasu charge on Fixed Assets of Shree Janardana Mills Ltd."

13. Further, perusal of assessment order for Assessment Years 2008-09, picked up for scrutiny under Section 143(3) of the Act shows that addition has not been made in respect of interest on loan outstanding from Shree Janardhanan Mills Ltd. Same is the case with the Assessment Order for the Assessment Years 2014-15, 2015-16 and 2016-17 placed on record vide letter dated 27.04.2022. Even in the assessment framed under Section 143(3) of the Act for the Assessment Year 2010-11, which was subsequently, reopened leading to the present proceedings, no addition was made for such interest. In paragraph 6 of the letter, dated 12.08.2010, filed by the Assessee during the assessment proceedings, it has been stated that no interest has been provided for in respect of loan outstanding with Shree Janardhanan Mills Ltd as the recovery of such interest income is doubtful. No interest income has been credited in books on the loan outstanding with Shree Janardhanan Mills Ltd since Assessment Year 2008-09. In our view, the CIT(A) was justified in deleting the addition on account of interest holding the same to be notional income keeping in view in the facts and circumstances of the present case by following the judgment of the Hon'ble Bombay High Court in the case of CIT-7 Vs Neo Solutions (P.) Ltd: 387 ITR 667. Accordingly, we decline to interfere in the order passed by the CIT(A) on this issue. Even otherwise, we note that the re-

assessment proceedings were initiated in contravention of the provisions of Section 147 read with Section 148 of the Act. We note that while rejecting the objections vide order dated 07.09.2015, the Assessing Officer accepted that the issue was examined during assessment proceedings under Section 143(3) of the Act, however, proceeded to reject objection on the ground that view adopted by the Assessing Officer was not a plausible view. Admittedly, there was no new material before the Assessing Officer to form basis of belief that income had escaped assessment. The Assessing Officer erred in initiating re-assessment proceedings under Section 147 of the Act merely on account of change of opinion as the issue was examined during the assessment proceedings under Section 143(3) of the Act.

14. In view of the above, we dismiss Ground No. 1 to 5 raised by the Revenue and allow the Cross-Objection No.1 of the Assessee.
15. In result, appeal filed by the Revenue (ITA No. 5641/Mum/2019) is dismissed and the Cross Objection filed by the Assessee (Co No 21/Mum/2021) is allowed.

Order pronounced on 20.07.2022.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 20.07.2022
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai