

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “H”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA Nos.842 & 840 /M/2022
Assessment Years: 2010-11 & 2011-12**

Shri Sayed Saleem Ahmed Syed Khwazameyah, 304, Sanjani Apartment, Bashabhai Compound, Bandra (West), Mumbai – 400 050 PAN: AACPB3426B	Vs.	DCIT 23(3), Matru Mandir, 1 st Floor, Grant Road, Mumbai - 400004
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Tejinder Pal Singh, D.R.

Date of Hearing : 11 . 07 . 2022
Date of Pronouncement : 04 . 08 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

For the sake of brevity aforesaid cross appeals bearing common question of law and facts are being disposed of by way of composite order.

2. The appellant, Shri Sayed Saleem Ahmed Syed Khwazameyah (hereinafter referred to as ‘the assessee’) by filing the present appeals, sought to set aside the impugned orders of even dated 29.10.2019, passed by Commissioner of Income Tax (Appeals), Mumbai [hereinafter referred to as the CIT(A)] qua the assessment years 2010-11 & 2011-12 on identically worded grounds except the difference in figures inter alia that:-

“1) On the facts and circumstances of the case and in law, the assessing officer erred in disallowing interest on borrowed capital without considering that the assessee has advanced money out of interest free funds available with him in the form of Capital and Current Liabilities as on the date of Balance Sheet.

2) That the Assessing officer has erred in disallowing interest u/s 37(1) of Income Tax Act, 1961 without considering fact of general presumption of interest free fund available with the assessee are invested in interest free loans given to the sister concern.

3) That the Assessing officer has erred in disallowing interest u/s 37(1) of Income Tax Act, 1961 without considering that the interest free loans are out of commercial expediency and therefore no disallowance u/s 37(1) is called for.

4) That the Assessing officer has erred in disallowing interest u/s 37(1) of Income Tax Act, 1961 without considering that the assessee is entitled to deduction of interest paid on moneys borrowed for investment in the companies in which he is a Director since the amount is received by him from the Business as Remuneration and is offered/offerable to tax.

5) That the Assessing officer has erred in disallowing interest u/s 37(1) of Income Tax Act, 1961 without considering that the assessee is entitled to deduction in respect of interest paid on money borrowed for investment in the companies in which he is Director since the amount is invested for acquiring a controlling stake in these companies and therefore rightly allowable u/s 37(1) of the Act.

6) That the Assessing officer has erred in computing the amount of own funds by deducting the amount of Stock and Cash and Bank balances therefrom.

7) That the Assessing officer has made addition in violation of CBDT Instruction No 7/2014 dated 28th September 2014 which states that the cases selected fro Scrutiny under CASS should be limited to areas under 26AS/CIB/AIR data for which the case is selected.

8) That the Interest levied u/s 234B and 234C of the Act be deleted.

9) Appellant reserve their right to add, alter, modify or delete the Grounds of Appeal at the time of hearing”

3. Briefly stated facts necessary for adjudication of the controversy at hand are : assessee is the proprietor of M/s. Bombay Arts engaged in the business of trading, manufacturing of furniture, interior decorators, commercial renting and financing and

advertisement in hoardings. Assessee claimed income from business, capital gains and income from other sources. Assessing Officer (AO) during the scrutiny proceedings noticed from the profit and loss account that assessee has claimed financial expenses of Rs.7,17,39,531/- and Rs.5,41,76,181/- detail of which was given in the schedule 14 of the balance sheet and profit and loss account. Declining the contentions raised by the assessee the AO proceeded to hold that the assessee has diverted interest bearing funds to the various non interest bearing deposits and investments thus reached the conclusion that the assessee has used an amount of Rs.15,14,75,100/- and Rs.7,92,85,893/- for A.Y. 2010-11 and 2011-12 for non business purpose and thereby disallowed the interest attributable to the aforesaid amounts under section 37 of the Income Tax Act, 1961 (for short 'the Act') by making addition of Rs.1,49,84,648/- Rs.1,04,86,359/- for A.Y. 2010-11 & 2011-12 respectively. Assessee accordingly framed the assessment at the total income of Rs.1,87,50,620/- and Rs.2,95,26,830/- under section 143(3) read with section 147 of the Act for A.Y. 2010-11 & 2011-12 respectively.

4. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeals. Feeling aggrieved from the impugned orders passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeals.

5. Despite issuance of the notice and service of the assessee none appeared on behalf of him, so the Bench proceeded to decide these appeals on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

6. We have heard the Ld. Departmental Representative for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

7. Bare perusal of the impugned orders passed by Ld. CIT(A) goes to prove that the Ld. CIT(A) has passed orders ex-parte by recording the fact that despite numerous notices issued to the assessee none appeared to file the reply and thereby dismissed both the appeals for want of prosecution without going into the merits of the case. It is nowhere recorded in the impugned order that if the notices sent to the assessee were ever served upon the assessee nor the Ld. CIT(A) invoked the presumption that notices sent to the assessee through registered cover was not received back served/unserved, hence presumed to have been served upon the assessee.

8. In these circumstances, we are of the considered view that the Ld. CIT(A) was required to dispose of the appeal on merits. No purpose would be served by keeping the appeals pending hence the same are remanded back to the Ld. CIT(A) to decide afresh after providing opportunity of being heard to the assessee. Resultantly, appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 04.08.2022.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER
Mumbai, Dated: 04.08.2022.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.