

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No. 2310/Mum/2022
(A.Y.2013-14)**

M/s Milestone Mercandise Private Limited , 5 Measant Road, K. T. Compound, Sewreee (East), Mumbai – 400015	Vs.	DCIT-7(1)(1) Aaykar Bhavan, M.K. Road, Churchgate, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABCM5078N		
Respondent	..	Appellant

Appellant by :	Viraj Mehta
Respondent by :	Mahita Nair

Date of Hearing	01.11.2022
Date of Pronouncement	15.11.2022

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the assessee is directed against the order passed the NFAC, Delhi, dated 10.08.2022 for A.Y. 2013-14. The assessee has raised the following grounds before us:

“1. Passing the order against violation of natural justice

The Ld CIT(A) erred in passing the order without providing proper opportunity of hearing to the appellant Company. Thereby, passing the order without proper opportunity of hearing is erroneous and liable to be set aside.

2. Disallowance of Interest Expenses without relying upon the Income Tax Act, 1961

Without Prejudice to the above The Ld. CIT(A) erred in confirming the disallowance made by Ld. Assessing Officer (hereinafter referred to as the "Ld AO] with regards to the interest expenses wherein no provision of Income Tax Act, 1961 has been relied upon for the aforesaid disallowance and the Ld. CITIA) has assumed the section of disallowance in the CIT(A) order. Therefore, such addition is bad in law & erroneous in facts and thereby liable to be deleted.

3. Disallowance of Interest

Without Prejudice to the above, The Ld CITIA) erred in confirming the disallowance made by Ld. Assessing Officer (hereinafter referred to as the "La AO"] of interest of Rs.1,30,11,304/- Such disallowance is made without any basis and without any proper reasoning/explanation. Hence, such disallowance is thereby had in law & erroneous in facts and thereby liable to be deleted.

4. *The Appellant craves leave to add, alter, rescind or amend any of the above grounds."*

2. Fact in brief is that return of income declaring income of Rs.1,69,46,578/- was filed on 28.09.2013. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 15.09.2014. During the course of assessment the A.O noticed that the assessee has borrowed funds from related parties and paid interest @ 28% per annum. However, the assessee had given loan to wholly owned subsidiary of Rs.1,21,26,874/- as on 31.03.2013 without charging any interest, therefore, the A.O has disallowed the interest payment made to wholly owned subsidiary @ 28% per annum to the extent of Rs.1,21,76,874/- at Rs.33,95,525/- and added to the total income of the assessee. The A.O has also noticed that assessee has given advances to group companies @ 9% and closing balance of such loan as on 31.03.2013 was Rs.5,06,09,362/-. In this regard the A.O observed that assessee had borrowed funds from related party at the interest rate of 28% per annum, however, it has charged lesser interest @ 9% on the loan given by it to group companies. Therefore, the differential interest of

19% of Rs.5,06,09,362/- at Rs.96,15,779/- was disallowed and added to the total income of the assessee.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee after considering the material on record after holding that assessee has not made compliance during the course of appellate proceedings in spite of issuing notices of hearing 31.03.2020, 27.10.2021, 11.01.2022 and 13.07.2022 respectively. However, the assessee never responded to the notices issued subsequently.

4. During the course of appellate proceedings at the outset the ld. Counsel contended that assessee has applied for adjournment, however, the ld. CIT(A) has not communicated the fresh date of hearing in view of the adjournment sought by the assessee.

On the other hand, the ld. D.R supported the order of lower authorities.

5. Heard both the sides and perused the material on record. The ld. CIT(A) has adjudicated the appeal of the assessee ex-parte holding that during the course of appellate proceedings notices dated 31.12.2020, 27.11.2021, 11.01.2022 and 13.07.2022 were issued, however, the assessee had never responded to the notices issued. In this regard we have perused the copy of online adjournment detail filed by the ld. Counsel, it is noticed that assessee has applied for adjournment online on 11.11.2021, 25.01.2022 and 22.07.2022 respectively. However, it is observed that before disposing the appeal of the assessee ld. CIT(A) has not specifically dealt with the adjournment applications filed by the assessee, therefore, we consider it appropriate to remand the matter

back to the file of the ld. CIT(A) for adjudicating de novo after providing another fair and reasonable opportunity of hearing to the assessee keeping in view of the principle of natural justice as per maxim 'Audi Alteram Partem'. The assessee also directed to make due compliance this time before the ld. CIT(A) otherwise the ld. CIT(A) will be at liberty to take adverse view in case of assessee failed to make compliance during the course of set aside appellate proceedings. Therefore, the appeal of the assessee is allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 15.11.2022

Sd/-
(Vikas Awasthy)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 15.11.2022

Rohit: PS

देश 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 DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

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