

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCHES : NAGPUR
(THROUGH VIRTUAL HEARING)

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

AND

DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

ITA.No.315/Nag./2017
Assessment Year 2011-2012

M/s. Hindustan Builders, Nagpur – 10 PAN AAAPH4959H C/o. Manoj G Moryani, Advocate, 1 st Floor, Sudama Bhavan, Behind Sut Market, Gandhinagar, Nagpur. PIN 440002	vs.,	Income Tax Officer, Ward – 1 (2), Nagpur.
(Appellant)		(Respondent)

For Assessee :	Shri Manoj Moryani
For Revenue :	Shri G.J. Ninawe

Date of Hearing :	17.11.2022
Date of Pronouncement :	25.11.2022

ORDER

PER SATBEER SINGH GODARA, J.M.

This assessee's appeal for A.Y. 2011-12, arises against the CIT(A)-1, Nagpur's dated 11.05.2017, passed in Case No.CIT(A)-1/458/2013-14, in proceedings under section 143(3) of the Income Tax Act, 1961 ["In short Act"].

2. The assessee pleads the following substantive grounds in the instant appeal.

1. *"The learned Commissioner of Income Tax (Appeals)-1, Nagpur erred in confirming the total addition of Rs.9,57,866/-. Therefore, the order passed is illegal, invalid and bad in law.*

2. *The learned Commissioner of Income Tax (Appeals)-1, Nagpur erred in confirming addition of Rs. 76,482/- u/s.40(a)(ia) of the Income-tax Act, 1961 though the assessee has already made the payment and no amount is outstanding and as per newly amended provision of Section 40a(ia), 30% of the amount will be deducted only. Therefore the order passed is unjustified, unwarranted and excessive.*
3. *The learned Commissioner of Income Tax (Appeals)-1, Nagpur erred in confirming addition of Rs.8,12,878/- as an interest income added on interest free advances. Therefore the order passed is unjustified, unwarranted and excessive.*
4. *The learned Commissioner of Income Tax (Appeals)-1 erred in confirming disallowances u/s. 43B at Rs.35,913/- though the payment were actually made by the assessee. Therefore, the order passed is unjustified, unwarranted and excessive*
5. *The learned Commissioner of Income Tax (Appeals)-1, 'Nagpur erred in not accepting the contention of assessee therefore order passed is illegal, invalid and bad in law.*
6. *The appellant seeks permission to add any other ground of appeal or amend or alter the aforesaid ground of appeal at the time of hearing of the appeal.”*

3. Grounds 1, 5 and 6 hereinabove are rejected as general in nature.

4. The assessee's second substantive ground seeking to restrict the impugned section 40(a)(ia) of the Act disallowance of Rs.76,482/- to the extent of 30% only stands declined in the light of hon'ble apex court's decision in Shri Choudhary Transport Co. vs., ITO [2020] 118 taxmann.com 47 (SC) holding therein that the statutory amendment in section 40(a)(ia) inserted by the Finance Act w.e.f. 01.04.2015 stipulating such a disallowance @ 30% carries prospective effect only. This second substantive ground is rejected therefore.

5. The assessee's third substantive ground challenge correctness of both the learned lower authorities action making 36(1)(iii) disallowance of Rs.8,12,878/- in the course of assessment herein dated 21.01.2014 and upheld in the CIT(A)'s order. We find during the course of hearing that the impugned interest amount does not involve the assessee's corresponding interest claim on the loans given amounting to Rs.54,19,193/- to various parties since the learned lower authorities have themselves charged 15% interest thereupon. That being the case, we see no reason to sustain the impugned disallowance/addition as such a course of action for charging interest involving advance made to third parties has nowhere been prescribed either u/s. 36(1)(iii) or u/s. 37 of the Act, as the case may be. We, therefore, delete the impugned

disallowance for this precise reason alone. The assessee succeeds in its instant third substantive ground.

6. Learned counsel does not press for the assessee's 4th sole substantive ground raising section 43B disallowance issue of Rs.35,913/- keeping in mind smallness thereof. Rejected in very terms.

7. No other ground or argument has been raised before us during the course of hearing.

8. This assessee's appeal is partly allowed in above terms.

Order pronounced in the open court on 25.11.2022

Sd/-

[DR. DIPAK P. RIPOTE]
ACCOUNTANT MEMBER

Sd/-

[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 25 November, 2022

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Ld. CIT(A) concerned.
4.	The CIT concerned
5.	D.R. ITAT, Nagpur Bench, Nagpur
6.	Guard File.

//By Order//

Assistant Registrar, ITAT, Pune Benches, Pune.