

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI T. R. SENTHIL KUMAR, JUDICIAL MEMBER**

आयकरअपीलसं./ITA No. 416/Rjt/2017
निर्धारणवर्ष/Asstt. Year:2013-14

M/s. Hindustan Projects, "Twilight", 2 nd Floor, H-10 Housing Board, Nr. Astron Under Bridge, Rajkot-360001 PAN: AADFH6324H	Vs.	ITO, Ward-2(1)(1), Rajkot
(Applicant)		(Respondent)

Assessee by :	Shri Rajendra Singhal, A.R.
Revenue by :	Shri B. D. Gupta, Sr. DR

सुनवाईकीतारीख/**Date of Hearing** : 20/12/2022
घोषणाकीतारीख/**Date of Pronouncement**: 04/01/2023

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-2 (in short the Ld. CIT(A)), Rajkot dated 31/08/2017 arising in the matter of assessment order passed under Section 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2013-14.

2. The assessee has raised the following grounds of appeal:

"1. The Assessment Order under section 143(3) of the Act, is bad in law as well as facts.

2. The order of the learned Commissioner of Income Tax (Appeals) is bad in law as well as facts.

3. *The learned Commissioner of Income Tax (Appeals) erred on facts as well as in law by confirming the addition of Rs. 80,85,000/- made by the learned Assessing Officer under section 68 of the I.T. Act, 1961.*

4. *The learned Commissioner of Income Tax (Appeals) erred on facts as well as in law by confirming the addition by Rs.12,77,083/- made by the learned Assessing Officer under section 36(1)(iii) of the I.T. Act, 1961.*

5. *The learned Commissioner of Income Tax (Appeals) erred on facts as well as in law in confirming the charging of interest u/s. 234A, 234B, and 234C of the Act, when addition itself not sustainable.*

Your Honour's appellant craves leave to add, amend, alter or withdraw any one or more grounds of appeal on/or before hearing of appeal."

3. The first issue raised by the assessee is that the Ld. CIT(A) erred in confirming the addition of Rs. 80,85,000/- under the provisions of Section 68 of the Act.

4. The facts briefly stated in the present case are that the assessee is an individual and engaged in the business of civil construction. The assessee in the year under consideration has obtained unsecured loan of Rs. 80,85,000/- from the following parties:

i)	<i>M/s Jay Raj Enterprise</i>	<i>Rs. 10,85,000/-</i>
ii)	<i>Shri Rajabhai</i>	<i>Rs. 70,00,000/-</i>
	<i>Total</i>	<i>Rs. 80,85,000/-</i>

5. The assessee during the assessment proceedings could not discharge his onus by furnishing the necessary details of the parties as provided under Section 68 of the Act. Therefore, the Assessing Officer treated the same as unexplained cash credit under Section 68 of the Act and added to the total income of the assessee.

6. Aggrieved assessee preferred an appeal to the Ld. CIT(A). The assessee before the CIT(A) has filed the additional evidences in support of the loan taken from the parties. These additional evidences were including copy of PAN, Income Tax Return, Bank Statement and confirmation.

However, the Ld. CIT(A) did not admit the additional evidences on ground that the assessee was furnished sufficient opportunities during the assessment proceedings. Furthermore, the case of the assessee does not fall under any of the clause provided under rule 46A of income tax rules relating to the admission of the additional evidences. Thus, the Ld. CIT(A) confirmed the order of the Assessing Officer.

7. Being aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us. The Ld. AR before us filed a Paper Book running from Page 1 to 28 and contended that the assessee was to collect the documents from the third parties and in this process it has taken lot of time. Therefore, there was a failure in filing the supporting documents during the assessment proceedings. However, all the documents were filed before the Ld. CIT(A) explaining the reasons of the delay along with the affidavit. The Ld. A.R. accordingly contended that the fresh evidences should be admitted and the matter should to be set-aside to the file of the AO for fresh adjudication as per the provision of law.

8. On the other hand, the Ld. D.R. did not raise any objection if the matter is set-aside to the file of the A.O. for fresh adjudication as per provisions of law.

9. We have heard the rival contention of both the parties and perused the materials available on record. Admittedly the assessee was to collect the documents from the third parties and therefore, in the interest of justice and fair play we are inclined to admit the documents filed by the assessee. Thus, the matter is set-aside to the Ld. CIT(A) for fresh adjudication as per the provision of law and in the light of the additional documents filed by the

assessee. Hence, the ground of appeal of the assessee is allowed for statistical purposes.

10. The next issue raised by the assessee is that the Ld. CIT(A) erred in confirming the addition made by the Assessing Officer of Rs. 12,77,083/- on account of diversion of interest bearing loan.

11. During the assessment proceedings, it is found that the assessee on one hand is incurring interest expenses on the loan borrowed by him and on the other hand, it has given interest loans/ advances to various parties amounting to Rs. 1,13,39,651/- only. Thus, the Assessing Officer was of the view that the borrowed fund has been diverted for non-commercial purposes. Thus, the Assessing Officer disallowed the interest expenses of Rs. 12,77,083/- and made the addition to the total income of the assessee.

11.1 The aggrieved assessee preferred an appeal to the learned CIT (A) who confirmed the order of the AO.

12. Being aggrieved of the order of the Ld. CIT(A), the assessee is in appeal before us. The Ld. AR before us inter alia contended that the own fund of the assessee exceeds the amount of interest free loans and advances provided to the various parties. Therefore, a presumption can be drawn that the interest-free loans and advances has been provided by the assessee out of its interest-free fund available with it. Therefore, there cannot be any disallowance of any interest expense. To this effect the Ld. AR has drawn our attention on the Balance Sheet as 31.03.2013 of the assessee which is placed on Page 93 of the Paper Book.

13. On the contrary, the Ld. D.R. vehemently supported the order of the authorities below.

14. We have heard the rival contention of both the parties and perused the materials available on record. Admittedly the own fund of the assessee exceeds the amount of loans and advances given to various parties. This fact can be verified from the Balance Sheet placed on Page 93 of the Paper Book. Accordingly, we are of the view that a presumption can be drawn to hold that the interest free advances has been given by the assessee out of his own fund. Accordingly, the question of making the disallowance of interest expense does not arise. Hence, the ground of appeal of the assessee is hereby allowed.

15. In the result, the appeal filed by the assessee is partly **allowed for statistical purposes.**

Order pronounced in the Court on 04/01/2023 at Ahmedabad.

Sd/-
(T. R. SENTHIL KUMAR)
JUDICIAL MEMBER

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 04/01/2023

Tanmay, Sr. PS

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आदेशकीप्रतिलिपिगेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/ DR, ITAT,
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad