

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 81/RPR/2021
निर्धारण वर्ष / Assessment Year : 2014-15

Mohan Lal Kiri HUF
Main Road, Charama,
Kanker (C.G.)
PAN : AAGHM3140K

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-1(1), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.K. Agrawal, CA
Revenue by : Shri G.N Singh, Sr. DR

सुनवाई की तारीख / Date of Hearing : 29.11.2022

घोषणा की तारीख / Date of Pronouncement : 13.01.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 29.09.2021, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 29.11.2016 for the assessment year 2014-15. The assessee has assailed the impugned order on the following grounds of appeal before us :

“1. On the facts and in the circumstances of the case the learned CIT(Appeals), NFAC is not justified in sustaining the disallowance of interest of Rs.3,38,063/-, being interest @3% paid to relatives (Actual paid 18% -allowed 15%) on unsecured loan creditors, while allowing interest paid to other unsecured creditors @18% p.a.

2. On the facts and in the circumstances of the case the learned AO erred in invoking provision of section 40A(2)(b) when the rate of interest payment to unsecured loan creditors is same for loan from relatives and loan from other persons.

3. On the facts and in the circumstances of the case the learned AO erred in not accepting rate of interest paid to unsecured loan creditors @18% by restricting it to 15% without any material or evidence while the appellant have proved the prevalent market rate of interest at 18% which was also received by the appellant for such type of loan given to others.”

2. Controversy involved in the present appeal lies in a narrow compass, i.e., sustainability of the disallowance of the assessee's claim for deduction of interest on unsecured loans raised from relatives u/s.40A(2)(b) of the Act.

3. Succinctly stated, the A.O during the course of the assessment proceedings observed that the assessee had claimed deduction of interest of Rs.27,97,989/- that was paid @18% on the unsecured loans raised from the following 19 related persons:-

S. No.	Name	Rate of interest	Payment made	Restricted rate of interest	Amt.	Difference
1.	Ajay Kiri Charama	18%	15196	15%	12663	2533
2.	Ajay Kiri (HUF) Charama	18%	185867	15%	154889	30978
3.	Jayant Kiri	18%	534698	15%	445581	89117
4.	Jogendra Kiri Charama	18%	160559	15%	133799	26760
5.	Jogendra Kiri (HUF)	18%	26852	15%	22377	4475
6.	Khem Kiri Charama	18%	25165	15%	20971	4194
7.	Khem Kiri (HUF) Charama	18%	140154	15%	116795	23359
8.	Lokesh Kiri Charama	18%	15317	15%	12764	2553
9.	Lokesh Kiri (HUF) Charama	18%	188719	15%	157266	31453
10.	Satyendra Kiri Charama	18%	17592	15%	14660	2932
11.	Satyendra Kiri (HUF) Charama	18%	86914	15%	72428	14486
12.	Umesh Kiri Charama	18%	17543	15%	14619	2924
13.	Umesh Kiri (HUF) Charama	18%	141436	15%	117863	23573

14.	Smt. Bhawana Kiri Charama	18%	50173	15%	41811	8362
15.	Smt. Indu Kiri Charama	18%	360927	15%	300772	60155
16.	Smt. Swati Kiri Charama	18%	362111	15%	301759	60352
17.	Smt. Usha Kiri Charama	18%	142711	15%	118926	23785
18.	Smt. Veena Kiri Charama	18%	91131	15%	75942	15189
19.	Smt. Bharti Mehta Dmt.	18%	234924	15%	195770	39154
		Total	2797989		2331655	466334

Observing, that the assessee had excessively paid interest @18% as in comparison to the interest which would have otherwise been paid by him on a personal loan raised from State Bank of India, the A.O on the basis of his aforesaid conviction restricted the assessee's claim for deduction of interest on the loans raised from the aforesaid related parties to 15% and accordingly, made a disallowance of Rs.4,66,334/- (supra.).

4. On appeal, the CIT(Appeals) though principally concurred with the disallowance made by the A.O u/s. 40A(2)(b) of the Act but taking cognizance of the fact that two parties, viz. Shri Jayant Kiri and Smt. Bharati Mehta Dmt. did not fall within the realm of the specified persons contemplated u/s. 40A(2)(b) of the Act, thus, excluded the disallowance to

the said extent made by the A.O. Accordingly, the CIT(Appeals) partly allowed the assessee's appeal.

5. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

6. We have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

7. Having given a thoughtful consideration to the issue in hand, we are unable to persuade ourselves to subscribe to the view taken by the lower authorities. Admittedly, as per sub-section 2(a) of Section 40A of the Act, where the assessee incurs any expenditure in respect of which payment has been or is to be made to any specified related party, and the Assessing Officer is of opinion that such expenditure is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment is made or the legitimate needs of the business or profession of the assessee or the benefit derived by or accruing to him therefrom, so much of the expenditure as is so considered by him to be excessive or unreasonable shall not be allowed as a deduction.

8. Ostensibly, the aforesaid statutory provision presupposes a comparison between the likes as a yardstick which would form the very basis for the A.O to trigger the disallowance therein contemplated. Undeniably, the aforesaid 15 persons referred to by the A.O fall within the meaning of related parties as contemplated in clause (b) of sub-section (2) to Section 40A of the Act. Controversy as observed by us hereinabove hinges around the sustainability of the disallowance which had been assailed by the assessee before us, primarily for the very reason that the same is based on an infeasible comparison. As stated by the Ld. AR, and, rightly so, we find that the A.O while triggering the provisions of Section 40A(2)(a) of the Act had embarked on an infeasible comparative analysis, i.e., comparison between interest that was paid by the assessee on unsecured loans raised from related parties, as against the interest which would have otherwise been paid on a personal loan raised from State Bank of India. We cannot remain oblivious of the fact that unlike unsecured loans the loans raised from a bank involves certain formalities, i.e., providing of collateral securities, hidden charges etc. On the basis of material difference between unsecured loans raised by the assessee from his relatives as against that raised from a nationalized bank, we are of a strong conviction that no feasible comparison could have been made on the basis of which the disallowance u/s.40A(2)(a) could have been carried out.

9. At this stage, we would also not hesitate to state that the very observation of the A.O that though the assessee had sufficient amounts lying in his bank account, but it had still raised unsecured loans from the related parties is an absolutely uncalled for observation or a suggestion as to the manner in which the assessee should have managed its financial affairs. We, say so, for the reason that the manner in which the assessee chooses to conduct his business is absolutely his prerogative and the department by no means can trench on the same. The department cannot be permitted to share its wisdom as regards the manner in which the business of the assessee is to be carried out. Be that as it may, we are of a strong conviction that as the disallowance worked out by the A.O u/s.40A(2)(a) of the assessee's claim for deduction of interest expenditure paid on unsecured loans raised from relatives is absolutely based on an infeasible comparison, therefore, there is no justifiable reason to sustain the said disallowance, which, thus, is vacated. Accordingly, we set-aside the order passed by the CIT(Appeals) and vacate the disallowance of Rs.4,66,334/- that was sustained by him. Thus, the **Grounds of appeal No.(s) 1 to 3** raised by the assessee are allowed in terms of our aforesaid observations.

10. In the result, appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-
DR. DIPAK P. RIPOTE
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 13th January, 2023
*****SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Raipur (C.G)
4. The Pr. CIT, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy//

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.