

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT “**SMC**” BENCH,
SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

आ.अ.सं./ITA No.203/SRT/2020 (AY 2013-14)

(Hearing in Physical Court)

Javaharlal S Dhariwal 886 old GIDC, Nr. Bank of Baroda, Katargam, Surat- 395004 PAN No: AAYPD 4207 G	Vs	Income Tax Officer, Ward-1(2)(2), Surat-395001
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से /Assessee by	Shri Mahul Shah, C.A
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
सुनवाई की तारीख/Date of hearing	02.02.2023
उद्घोषणा की तारीख/Date of pronouncement	28.04.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of Ld. Commissioner of Income-Tax (Appeals)-2, Surat [for short to as “Ld.CIT(A)”] dated 30.01.2020 for assessment year 2013-14, which in turn arises out assessment order passed by Income-tax Officer-ward-1(2)(2), Surat/Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 12.02.2016. The assessee has raised the following grounds of appeal:-

“1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in making a disallowance of Rs.3,45,378/- u/s 40(a)(ia) of the IT Act 1961.

2. On the facts and circumstances of the case as well as law on the subject the learned CIT(A) has erred in partly confirming the action of Assessing Officer by sustaining the disallowance of Rs.2,46,915/- out of total disallowance of Rs.4,93,830/- on account of machinery salary expenses.

3. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in making addition of Rs.3,95,466/- being interest expenses claimed u/s 57 of the Act.

4. It is therefore prayed that addition made by Assessing Officer and confirmed by CIT(A) may please be deleted.

5. Appellant craves leave to add, alter or delete any ground(s) either of appeal.”

2. Brief facts of the case are that assessee is an individual, during the year under consideration, the assessee offered income from business and profession and from other sources. The assessee while filing his return of income offered at Rs.2,88,160/- as taxable income. The case was selected for scrutiny. During the assessment, Assessing Officer noted that assessee has shown various expenses, which includes transport expense paid to Kishan Tempowala of Rs.1,80,170/-; interest payment to Nareshbhai Kumbhani, Jograj Sampatraj & Co. and Jograj S. Rana (HUF) of Rs.68,958/-, Rs.48,125/- respectively. On payment of such expenses, the assessee has not deducted Taxes at Sources (TDS) as required under section 194C

r.w.s. 194A of the Act. The assessee was given show cause by the assessing officer as to such expenses may not be disallowed. The assessing officer recorded that no response was made nor any detailed like PAN, or addresses of the parties were furnished. The Assessing Officer in absence of detailed made a disallowance of Rs.3,45,378/- under section 40(a)(ia) of the Act. The Assessing Officer further noted that assessee has also paid Rs.24,69,150/- in cash on account of “machinery salary”. The assessee was asked to furnish details of such expense. Assessing officer recorded that no details were furnished by assessee nor name and address of person to whom said expenses were paid, were given. Accordingly, in absence of such details the assessing officer disallowed 20% of such expense, thereby worked out the disallowance of Rs.4,93,830/-. The Assessing Officer also noted that under the head “income from other sources” of Rs.36,693/-. The assessee claimed interest expenses of Rs.3,95,466/-. The assessee was asked to furnish relevant details. The Assessing Officer recorded that despite service of show cause notice, no details of parties nor evidence for justification of such expenses were

furnished. The Assessing Officer disallowed interest expense of Rs.3,95,466/- and back to the total income of assessee.

3. Aggrieved by the additions in the assessment order, assessee filed appeal before Ld. CIT(A). Before Ld. CIT(A) the assessee filed his detailed submission on various disallowances. The submission of assessee is recorded in para-5 of order of Ld. CIT(A). On the disallowance u/s 40(a)(ia) of Rs.3,45,378/-, the assessee submitted that payments to Kishan Tempowala for transport expenditure, the assessee furnished copy of PAN along with vouchers. Against expenses of interest payment to three parties, assessee submitted that they have furnished for 15G/15H relating to non-deduction of TDS as their income was less than basic exempt limit. On the machine salary expense, the assessee submitted that machine salary paid by assessee regarding machineries, which were running all the times and machine salary pertains to ten machines. The assessee submitted that during assessment proceedings, no such show cause notice issued by Assessing Officer regarding disallowances of machines salary expenses. On the disallowance of interest expense of Rs. 395,466/-, the

assessee submitted that assessee availed loan for investment in his proprietary concern, "Vitrag Creation". The assessee furnished bifurcation of such expense, the assessee furnished capital account showing the interest expense claimed and confirmation of all the parties along with Income Tax Return shown that they have taken interest as "income in computation of their income". The submission of assessee was remanded back to Assessing Officer for his remand report. The Assessing Officer furnished his remand report on 12.08.2016. In the remand report, the assessing officer objected for admissions of additional evidence. On the addition of interest expenses disallowances the assessing officer reported that assessee furnished computation of income, confirmation of account of all three persons namely Nareshbhai, Shah Jigraj Sampatraj & Co and Jograj S Rana. However, the details of form15G/15H were not furnished. Against deduction of interest expense under section 57, the assessing officer reported that the assessee was asked to file partwise details of interest expenses with justification of allowably under the head "other sources". The deduction claimed in no way

incurred for the purpose of earning income offered under the head 'other sources' of Rs. 36,693/-. The assessee in his rejoinder submission, repeated the earlier submission made before Assessing Officer.

4. The Ld. CIT(A) after considering the submission of assessee granted partial relief to assessee. On disallowance u/s 40(a)(ia) of the Act, the Ld. CIT(A) held that out of total disallowance of Rs.3,45,378/- under section 40(a)(ia), the addition of Rs.1,65,208/- relates to interest expense and Rs.1,80,170/- on account of transport expense. The Ld. CIT(A) held that so far as addition of interest expense is concerned, if the Nareshbhai Kumbani, Jograj Sampatraj and Co. and Jogrtal S. Rana (HUF) have included interest in their ITR, the assessee would get relief provide as they fulfilled the condition of proviso to Section 40(a)(ia) r.w.s. 201(1) of the Act. However, assessee has not furnished required certificate as per Rule 31ACB in Form 26A so the condition was confirmed. On the other disallowance of transport expense, the Ld. CIT(A) held that assessee only provided PAN of the transporter and no other evidence, the Assessing Officer pointed out without various lacunae,

which has not been satisfactorily explained in rejoinder. Therefore, such addition was also confirmed by Ld. CIT(A). On the disallowance of Rs.4,93,830/- on account of machinery expenses, the Ld. CIT(A) restricted to 10%, against 20% disallowed by assessing officer. On other disallowance of interest expense, the Ld. CIT(A) held that no certificate as required under Rule 31ACB in Form 26A was furnished. Thus, the addition was upheld. Further aggrieved assessee has filed present appeal before the Tribunal.

5. I have heard the submission of Ld. Authorized Representative (Ld.AR) for the assessee and Ld. Senior Departmental Representative and perused the materials available on record. Ground No.1 relates to addition / disallowance under section 40(a)(ia) of Rs.3,45,378/-. Ld. AR for the assessee submits that before Assessing Officer, the assessee furnished all details as required by Assessing Officer from time-to-time. Before Ld. CIT(A) assessee specifically contended that assessee made payment of interest to three parties and transport expenses to Kishan Tempowala. As per under section 194C(6), in case the contractor, is in the business for hiring or leasing goods

carriage and furnished his PAN to the person responsible for making payment then TDS is not required to be deducted. The assessee has made payment for transport of goods and submitted copy of PAN and details were furnished with all the vouchers. The details of transport vouchers were furnished, copy of the same is also furnished all the payments made to transporter of each less than Rs.20,000/-. To support his submission, Ld. AR for the assessee relied on the order of Co-ordinate Benches of Bangalore, in the case of South India Freight Carriers vs. ITO, Ward-3(2)(4) Bangaluru in ITA No.2586/Bang/2018 dated 27.11.2019. So far as disallowance of interest expense is concerned paid to three parties, namely, Nareshbhai Kumbhani, Shah Jograj Sampatraj & Co & Jograj S Rana (HUF) and said parties have already shown interest income, in their ITR and respective in their taxable income also. The assessee has filed certificate of accountant, as required first proviso to Section 201(1) of the Act. The Ld. AR for the assessee submits that no disallowance is warranted on such interest income.

6. On the other hand, Ld. Sr-DR for the Revenue submits that assessee has not furnished any other evidence except PAN of transporter though remaining all other submission as made by assessee has already been considered by Ld. CIT(A) while deciding the issue in question.
7. I have considered the rival submission of both the parties and perused the record carefully. This disallowance consists of two components; (i) relates to disallowance of transport expense to Kishan Tempowala. I find that assessee has provided PAN of the transporter and the details of transport expenses. The genuineness of said expense is not doubted either by Assessing Officer or Ld. CIT(A). I further find that as per Section 194C(6) that the assessee has provided PAN of the transporter and the transaction is not disputed and no disallowances of such transport expense is warranted. Similarly, the view taken by Co-ordinate Benches of Bangalore in the case of South India Freight Carriers (supra). (ii) part of relates to interest disallowance on account of interest paid to three parties, I find that assessee has filed copy of ITR of recipients of the interest along with certificate of Chartered Accountant as required Rule 31ACB

in Form 26A. Therefore, this part of ground is allowed subject to verification by Assessing Officer. This part ground of assessee is allowed in above terms.

8. Ground No.2 relates to disallowance of machines salary expense. The Ld. AR for the assessee submits that Assessing Officer disallowed 20% of machine salary expenses, which was restricted to 10% by Ld. CIT(A). The Ld. AR for the assessee further submits that lower authorities disallowed the expense without doubting genuineness of such expenses. The assessee filed cash book for such expense and Ld. AR for the assessee prayed for deleting entire disallowance.
9. On the other hand, Ld. Sr-DR for the Revenue supported the order of lower authorities and would submits that assessee has already granted partial relief by Ld. CIT(A).
10. I have considered the rival submission of both the parties and perused the materials available on record carefully. I find that assessee has shown expense of Rs.24.69 lakh, which was paid in cash and no justification was given before Assessing Officer. the assessing officer reasonably disallowed only 20%. The Ld. CIT(A) further reduced it to

10%, thereby granted further relief of 50%. Entire expense assessee has shown in cash. Therefore, I do not find any reason to interfere with the finding of Ld. CIT(A). This ground of assessee's appeal is dismissed.

11. Ground No.3 relates to disallowance of interest expense of Rs.3,95,466/- under section 57 of the Act. The Ld. AR for the assessee submits that Assessing Officer made addition by taking view that assessee has not furnished any details and Ld. CIT(A) confirmed the action of Assessing Officer by holding that no certificate as per Rule 31ACB in Form 26A is furnished. The Ld. AR for the assessee submits that assessee has filed account confirmation and Form 26A. the ld AR for the assessee submits that interest expenses were incurred for earning interest expenses.
12. On the other hand, Ld. Sr-DR for the Revenue supported the order of lower authorities and stated that as per order of lower authorities, no such evidence was furnished before Ld. CIT(A) or before Tribunal to prove the nexus in interest paid and the interest income earned.
13. I have considered the submissions of the parties and find that the assessee failed to prove the nexus between the

interest income offered in the return of interest expense made. Thus, this ground of appeal is dismissed.

14.In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 28/04/2023.

Sd/-
(PAWAN SINGH)
[न्यायिक सदस्य JUDICIAL MEMBER]

सूरत/Surat, Dated: 28/04/2023
Dkp. Out Sourcing Sr.P.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT
4. DR
5. Guard File

By order

// True Copy //

Senior Private Secretary/
Secretary/Assistant Registrar, Private
Surat ITAT,