

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.174/Asr/2022
Assessment Year: 2017-18**

Sh. Rajkumar Sethi, A-24, 2 nd Floor, East of Kailash. [PAN:-AFMPS1679E] (Appellant)	Vs.	DCIT/ACIT, Srinagar. (Respondent)
---	-----	--

Appellant by	None.
Respondent by	Sh. Vedanshu Tripathi, Sr. DR

Date of Hearing	22.05.2023
Date of Pronouncement	07.06.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals), NFAC, Delhi,[in brevity the ‘CIT (A)’], order passed u/s 250of the Income Tax Act 1961, [in brevity ‘the Act’] for A.Y. 2017-18. The impugned order was emanated from the order of the Id. Assistant

Commissioner of Income Tax, Circle, Srinagar, [in brevity 'the AO'] order passed u/s 143(3) of the Act.

2. The assessee has taken the following grounds:

“Ground no 1

Whether the Id. Assessing Officer has erred in law and facts of the case in making an addition of 9.47.590/- as excess payment of interest made to the related party under section 40A(2)(a).

Ground no 2

Whether the learned Assessing Officer has erred in law and facts of the case in making an addition of Rs. 20,676/- as expenditure incurred in relation to exempted income is treated as inadmissible in terms of section 14A.

Ground No.3

The assessee may please be allowed to add, delete alter modify any of the grounds of appeal.”

3. Brief fact of the case is that during the course of assessment proceeding the Id. AO is found that the interest paid to Mr. Sethi family i.e. appellant totalling amount to Rs.24,26,957/- which is @ 10.83% per annum when it was compared to interest paid to other amount to Rs.2,13,524/- which is @ 6.6% only. The appellant

had not explained proper reason as to why the excess payment of interest paid to Sethi's family (own family member of assessee). In the absence of any explanation from the appellant, the Id. AO has invoked the provision of section 40A(2)(a) and addition was made amount to Rs.9,47,590/- which is excess of interest paid to related party. Further, the amount of Rs.20,676/- was paid related to a comment in Form 3CD, audit report where the liability u/s 40A was determined amount of Rs.20,676/-. The same amount was added back with the total income of the assessee. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) after considering the submission of the assessee and upheld the order of the Id. AO. Being aggrieved the assessee filed the appeal before us.

4. When appeal was called for hearing none was present on behalf of the assessee. The adjournment petition was filed. Considering the interest of justice, the adjournment petition was rejected and completed the discussion with Id. DR the matter is adjudicated as follows.

5. The Id. AR for the assessee filed written submissions which are kept in the record. The Id. AR submitted a chart related to interest amount and rate of interest which are inserted as below:

“The table below shows the details of loan, interest thereon and the closing balance of the unsecured loans.

S.No.	Particulars	Amount(Rs.)	Interest	Rate of	Closing Balance
		Before interest	Amount	Interest	of Loan
1	Charu Sethi	26,96,439.00	3,23,573.00	12%	29,87,655.00
2	Karan Sethi	41,14,386.00	4,93,726.00	12%	45,58,739.00
3	Kunal Sethi	37,41,456.00	4,48,975.00	12%	41,51,811.00
4	Neelam	46,89,841.00	5,62,781.00	12%	51,95,824.00
5	R.K Sethi	49,82,517.00	5,97,902.00	12%	55,20,629.00
6	Mehak	12,33,318.00	1,47,044.00	12%	13,34,925.00
7	RVT	9,26,395.00	55,584.00	6%	9,76,421.00
8	Satish	8,17,878.00	0	0	8,17,878.00
9	Shri Sai	1,07,079.00	0	0	1,07,079.00
	TOTAL	Rs.2,33,09,30	Rs.26,29,585.00		Rs.2,56,50,961.

6. The Id. AR further placed that the addition u/s 14A is nothing but a wrong impression of the Id. AO. The auditor wrongly mentioned in Form 3CD “the liability” u/s 14A amount to Rs.20,676/-.

6.1 In this respect a certificate annexed with APB, the financial statement, tax audit report which are annexed in **APB, page nos. 182 to 197**. In the Certificate the auditor specifically mentioned that they have made a mistake in **Clause 21 (h)** by mentioning the amount of Rs.20,676/-. The said Certificate dated 14.03.2023 bearing no. Cert/2022-23/MIS/51 of the Auditor is placed in record.

7. The Id. DR vehemently argued and relied on the order of the revenue authorities.

8. We heard the rival submission and considered the documents available in the record. The assessee has made a chart which has already filed before the appellate authority and the assessing officer. The copy of letter is annexed in **APB page nos. 32 to 181**. The assessee clearly depicted that rate of interest is 6.6% for all the persons. The assessee placed that calculation was wrong on behalf of the revenue authorities. The said documents are placed before both the authorities. It is clear from the evidence that the assessee had not violated section 40A(2) of the Act for excess payment of interest to related party. Accordingly, the addition amount of Rs.9,47,590/- is deleted.

8.1 Related to addition u/s 14A. The assessee filed the Auditor's Certificate which is stated about the mistake in form no 3CD. The revenue had not able to

bring any such evidence related to the expenses for exempted income for violation U/s 14A. Mere collection of data from the tax audit report without backing of any evidence would not serve the purpose for addition. Accordingly, the addition amount of Rs.20,676/- is quashed.

9. In the result, the appeal of the assessee bearing **ITA No. 174/Asr/2022** is allowed.

Order pronounced in the open court on 07.06.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order