

**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. 123/Asr/2023
Assessment Year: 2018-19

Shri Sham Lal Sharma Prop.M/s Sham Rice Sheller, Akhnoor Road Jammu-181201 Jammu & Kashmir-India	Vs.	The Additional / Joint/ Deputy/ Assistant Commissioner of Income / Income Tax Officer, National e- Assessment Centre Delhi
PAN: AKSPS1023R		
APPELLANT		RESPONDENT

Assessee by: Sh. Tarun Bansal, CA
Revenue by: Sh. Pradeep Kumar, Sr DR

Date of Hearing: 15/06/2023
Date of Pronouncement: 20/06/2023

ORDER

Per Dr. M. L. Meena, AM:

This appeal is filed by the Assessee against the order of the Ld. CIT(A)/NFAC, Delhi dt. 20/02/2023 in respect of the Assessment Year 2018-19.

2. In the present appeal Assessee has raised the following grounds:

“ That the order under appeal is against law and facts of the case.

That the Ld. CIT(A) has erred in law in not accepting the submission of the appellant that as notional interest of Rs. 3,29,370.00 on the interest free loan of Rs. 21,82,009.00 given to Son Ankush Sharma stands duly included in the return filed by the appellant the addition of notional interest of Rs. 329370.00 is liable to be deleted.

Any other ground which may be urged and allowed before or at the time of hearing. “

3. At the outset, the Id. Counsel for the assessee submitted that the Ld. CIT(A) was not justified in confirming the addition without appreciating the facts of the case and ignoring the submission of the appellant that as notional interest of Rs. 3,29,370.00 on the interest free loan of Rs. 21,82,009.00 were given to his Son Ankush Sharma which stands duly included in the return filed by the appellant. In support, the Ld. AR has filed a paper book of 7 pages which contains Acknowledgement of Return (APB, Pg.3); Computation of Total Income (APB, Pgs. 4-5) and submission before the CIT(A) (APB, Pgs. 6-7). He prayed that the addition of interest income of Rs. 329370.00 amount to double taxation and hence, it is liable to be deleted.

4. Per contra, the Ld DR although supported the impugned order, however, he failed to rebut the contention of the counsel.

5. We have heard the rival contentions, perused the material on record, impugned order, and written submission filed. Admittedly, the AO made the addition by observing that as mention in the audit report, loan was given by the appellant to his son free of interest although the assessee explained before the authorities below that the said notional interest of Rs 329370.00

stands already included in the income from other sources of Rs. 348934.00 in S. No. 7 of schedule BP relating to expenses debited to profit and loss account as income. The CIT(A) in absence of evidence rejected the plea made by the assessee as being treated as bald argument bereft of any supporting evidence ignoring the submission of the appellant. The authorities below are not justified in rejecting the claim of the appellant arbitrary without rebutting the documents filed on record. We are of the considered view that the document filed at Assessee Paper book pages 3 to 5, by the appellant which goes to the root of the matter are the vital documentary evidence to verify the claim of the appellant.

6. In view of the principles of natural justice, the authorities below ought to have disproved the claim of the assessee by way of rebutting its contention with support of corroborative documentary evidences on record after granting an adequate opportunity of being heard. The Hon'ble Supreme Court of India in the case of Tin Box Company vs. CIT reported in 249 ITR 216 in which their Lordships of Supreme Court of India observed as under:

“Assessment - Opportunity of being heard - Setting aside of assessment - Assessment order must be made after the assessee has been given

reasonable opportunity of setting out his case - Same not done - Fact that the assessee could have placed evidence before the first appellate authority or before the Tribunal is really of no consequence for it is assessment order that counts — Assessment order set aside and matter remanded to assessing authority for fresh consideration.”

7. The Hon'ble Delhi High Court in the case of “Bharat Aluminium Company Ltd. vs. Union of India”, (Supra) has held as under:

21. This Court is further of the view that a quasi-judicial body must normally grant a personal hearing as no assessee or litigant should get a feeling that he never got an opportunity or was deprived of an opportunity to clarify the doubts of the assessing officer/decision maker. After all confidence and faith of the public in the justness of the decision making process which has serious civil consequences is very important and that too in an authority/forum that is the first point of contact between the assessee and the Income-tax Department. The identity of the assessing officer can be hidden/protected while granting personal hearing by either creating a blank screen or by decreasing the pixel/density/resolution.

22. Consequently, this Court is of the view that the word "may" in Section 144B(viii) should be read as "must" or "shall" and requirement of giving an assessee a reasonable opportunity of personal hearing is mandatory.

THE CLASSIFICATION MADE BY THE RESPONDENTS/REVENUE BY WAY OF A CIRCULAR DATED 23RD NOVEMBER, 2020 IS NOT LEGALLY SUSTAINABLE. AN ASSESSEE HAS A VESTED RIGHT TO PERSONAL HEARING AND THE SAME HAS TO BE GIVEN, IF AN ASSESSEE ASKS FOR IT.

23. The argument of the respondent/Revenue that personal hearing would be allowed only in such cases which involve disputed questions of fact is untenable as cases involving issues of law would also require a personal hearing. This Court is of the view that the classification made by the respondents/Revenue by way of the Circular dated 23rd November, 2020 is not legally sustainable as the classification between fact and law is not founded on intelligible differentia and the said differentia has no rational relation to the object sought to be achieved by Section 144B of the Act.

24. Also, if the argument of the respondent/Revenue is accepted, then this Court while hearing an appeal under section 260A (which only involves a substantial question of law) would not be obliged in law to grant a personal hearing to the counsel for the Revenue!

25. Consequently, this Court is of the opinion that an assessee has a vested right to personal hearing and the same has to be given, if an assessee asks for it. The right to personal hearing cannot depend upon the facts of each case.

8. In the instant case, it is alleged by the authorities below, the assessee could have placed evidences either before the AO or the first appellate authority. The argument of the Ld. DR that personal hearing would be allowed only in such cases which involve disputed questions of fact is untenable as cases involving issues of law would also require a personal hearing. In our view, the classification made by the Revenue by way of the Circular dated 23rd November, 2020 is not legally sustainable as the classification between fact and law is not founded on intelligible differentia and the said differentia has no rational relation to the object sought to be achieved by Section 144B of the Act.

9. In view of the principles of natural justice, we consider it deem fit to restore back the matter to the file of the Ld. AO to pass *de novo* assessment after considering the written submission and evidences filed on record and may be filed before him during the fresh Assessment Proceedings after granting sufficient opportunity of being heard to the

assessee with a direction that the AO shall issue a Show Cause Notice and thereafter pass a reasoned order in accordance with law.

10. Accordingly, the impugned order is set aside and the matter is remanded to assessing authority to pass *de novo* assessment as per law.

11. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 21/06/2023

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

A.G/DOC*

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