

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 167/Ind/2022
Assessment Year:2013-14

Shri Rajesh Prajapati, 15, Naliya Bakhal, Ujjain	<u>बनाम/</u> Vs.	A.C.I.T., Circle 2(1), Ujjain
(Assessee / Appellant)		(Revenue / Respondent)
PAN: ALNPP5190Q		
Assessee by	Ms.Sonam Khandelwal, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	25.05.2023	
Date of Pronouncement	17.07.2023	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 16.08.2017 passed by learned Commissioner of Income-Tax (Appeals), Ujjain ["Ld. CIT(A)"], which in turn arises out of assessment-order dated 21.03.2016 passed by learned ACIT, Circle-2(1), Ujjain, ["Ld. AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2013-14, the assessee has filed this appeal on following grounds:-

- (i) That the Id. ACIT has disallowed interest expenses of Rs. 44,32,883/- u/s 36(1)(iii) of I.T. Act and added to the total income of the assessee.
- (ii) That the Id. ACIT has withdrawn deduction of Rs. 1,00,000/- u/s 80C, Rs. 4,546/- u/s 80D, Rs. 2,500/- u/s 80G.

2. Heard the learned Representatives of both sides at length and case-records perused.

3. The Registry has informed that as per Form No. 36 filed by assessee-appellant, the impugned order dated 16.08.2017 was served upon assessee on 25.08.2017. Therefore, this appeal must have been filed by 24.10.2017, but it was actually filed on 01.06.2022 after a delay of about 4 years and 220 days. Ld. AR for the assessee submitted that the assessee has filed a prayer for condonation of delay supported by an affidavit dated 01.05.2023. The said affidavit is reproduced below:-



मध्य प्रदेश MADHYA PRADESH

BZ 119506

माननीय ITAT इंदौर में प्रस्तुत करने हेतु शपथ-पत्र

नाम	:	राजेश प्रजापति
पिता का नाम	:	श्री मोतीलाल प्रजापति
उम्र	:	54 वर्ष
धंधा	:	व्यापार,
पता	:	7, जंयत परिसर, नानाखेड़ा, उज्जैन (म. प्र.)
पान नम्बर	:	ALNPP5190Q

मैं शपथगृहिता शपथपूर्वक सत्य कथन करता हूँ कि-

1. यह कि माननीय आयकर आयुक्त अपील के समक्ष धारा 143(3) के अंतर्गत आदेश के विरुद्ध अपील की थी, जो माननीय द्वारा अमान्य कर दी गयी ।
2. यह कि माननीय द्वारा अपील ओदश दिनांक 16.08.2017 को पारित किया था ।
3. यह कि मेरे द्वारा इस आदेश के विरुद्ध माननीय ITAT में एकट की धारा अनुसार दो माह के अंतराल में अपील करी जाना थी ।
4. यह कि चूंकि इस समय मेरे और मेरे परिवार के विरुद्ध CBI की जाँच चल रही थी जो कि बैंक ऋण के संबंध में थी और उस कार्यवाही के दौरान मुझे कारावास भी हुई थी । उस समय मेरी मानसीक स्थिति भी ठीक नहीं थी, और इसी दौरान मध्यप्रदेश भूराजस्व संहिता 1959 की धारा 147 ग की कार्यवाही भी चल रही थी ।
5. यह कि CBI की Enquiry एवं जाँच मई 2017 को शुरू हुई थी जो कि आज दिनांक तक भी खत्म नहीं हुई है । इस दौरान में CA के सम्पर्क में नहीं था ।

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6. यह कि मुझे मई 2022 में रिहा कर दिया गया था ।
7. यह कि उसके बाद मेने पूर्व में पारित आदेशों को CA के संज्ञान में लाया और जून 2022 में मैंने उपरोक्त आदेश के विरुद्ध अपील दाखिल की थी ।
8. CBI की जाँच के अनुसार जो नोटिस भेजे गए उनकी कुछ प्रतिक्रिया की प्रति संलग्न है ।

इति दिनांक : 19.5.2023

शपथगृहिता

स्थान : उज्जैन

सत्यापान लेख

मैं शपथगृहिता शपथपूर्वक सत्य कथन करता हूँ, कि उपरोक्त शपथ पत्र में दी गयी समस्त जानकारी मेरे निजी ज्ञान से सत्य व सही है । असत्य कथन कुछ नहीं लिखाया है, और न ही कोई जानकारी छिपायी है ।

इति दिनांक : 19.05.2023

शपथगृहिता

स्थान : उज्जैन

Subscribed and sworn before me on the 20 day of 5
2023 by राजेश प्रजापति S/o मंगीलाल प्रजापति
on behalf of स्वयं
कि उज्जैन
personally known to me
whose signature (s) is/are here to appended
NOTARY
DISTRICT UJJAIN (M.P.)

4. Referring to above affidavit, Ld. AR submitted that there was a CBI inquiry going on against the assessee and his family in respect of a bank loan. The enquiry started in May 2017 and still continuing causing mental agony to assessee throughout the period. Further, the assessee had to suffer imprisonment also due to which he was not a position to look into personal affairs including filing of appeal. Finally, when the assessee got acquittal from imprisonment in May, 2022, immediately thereafter he arranged to file appeal without further delay in the month of June, 2022. Ld. AR submitted that the delay in filing of appeal is due to such onerous circumstances and not because of any lethargy, negligence or mala fide intention of assessee. Ld. AR submitted that by making delay in filing appeal, the assessee does not stand to derive any benefit. Ld. AR also submitted that the assessee's case is meritorious and if the delay is not condoned it will seriously damage the assessee. Placing reliance upon decision of Hon'ble Supreme Court in **Collector, Land Acquisition Vs Mst. Katiji and others 1987 AIR 1353, 1987 2 SCC 387**, Ld. AR prayed to take a judicious view *qua* the assessee, condone delay and proceed with appeal.

5. In the case of **Collector, Land Acquisition vs Mst. Katiji (Supra)**, the Hon'ble Supreme Court held:

"The expression 'sufficient cause' employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice -- that being the life-purpose for the existence of the institution of Courts."

The Hon'ble Court also made following observations:

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every

second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

6. In the instant case, applying the guidelines set out by Hon'ble Supreme Court, we find that there is no culpable negligence or mala fide intention on the part of the assessee in delayed filing of present appeal. We find that the assessee could not deal with personal matters including filing of present-appeal due to certain proceedings against him. We do not find anything on record to suggest that there was a deliberate attempt to take any kind of benefit by late filing. Therefore, in such circumstances, we find that there exists sufficient and reasonable cause for condoning the delay and as held by the Hon'ble Supreme Court, where substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserved to be preferred. Even the Ld. DR for the Revenue, taking into account the exceptional situation of assessee, was fair enough to leave the matter to the wisdom of Bench. Therefore, in exercise of powers under section 253(5) of the Income-tax Act, 1961, we hereby condone the delay in filing present appeal and proceed to adjudicate on merits.

GROUND NO. 1:

7. In this ground, the assessee has challenged the disallowance of Rs. 44,32,850/- made by the AO out of deduction of interest expenditure claimed by assessee u/s 36(1)(iii).

8. On perusal of assessment order, it emerges that the assessee claimed total deduction of interest expenditure of Rs. 55,90,409/- on unsecured loans of Rs. 4,65,57,647/- taken from different sources. The AO found that the assessee had given loans & advances of Rs. 3,69,40,693/- reflected in the Balance-Sheet as on 31st March, 2013 without charging any interest. When the AO confronted the assessee to explain as to why interest deduction should not be disallowed on proportionate basis, the assessee did not file any explanation. Therefore, the AO made disallowance of Rs. 44,32,883/-. During first appeal, the assessee made certain submissions which are re-produced by CIT(A) in para no. 3 of appeal-order. However, vide para no. 4.1, the CIT(A) rejected submission of the assessee and upheld the disallowance.

9. Before us, Ld. AR filed a Written-Submission and argued assessee's case on the same line of reasoning as mentioned therein. We re-produce below the Written-Submission:

1

To,

The Hon'ble ITAT Bench
Income Tax
Indore (M.P.)

Sub – Shri Rajesh Prajapati, 8, Jayant Parisar, Nanakheda, Ujjain (M.P.)

PAN : ALLNPP5190Q

ASST. YR.2013-14

Honourable Sir,

May it be humbly submitted before your honor,

GROUNDS OF APPEAL

1. That the learned ACIT has disallowance interest expenses of Rs.4432883/- u/s 36(1)(iii) 14A of IT Act & added to the total income of the assessee.
2. That the learned ACIT has withdrawn deduction of Rs.100000/- u/s 80C, Rs.4546/- 80D Rs. 2500/- u/s 80G..

SUBMISSION & RELIEF SOUGHT

GROUND NO 1

That the learned ACIT has disallowance interest expenses of Rs.4432883/- u/s 36(1)(iii) 14A of IT Act & added to the total income of the assessee.

The assessee given advances to following parties on which interest was disallowed by Ld. ACIT, the details of each account is mentioned below-

Abhilasha Prajapati De 52000/ The assessee held De 52000/

2

Advance Rs 19519500/- The assessee has purchased the plot at Nanakheda and for these he has paid advance to the seller, it is recorded in the books and this advance is not to be included in advance given for interest income. Copy of ledger is enclosed.

Anjani Buildcon Bhopal RS 1600000/- The assessee paid Rs 1600000/ to Anjali buildcon Bhopal as on 14.01.2013. Copy of ledger enclosed herewith. This amount is paid for the construction of assessee house as an advance. and this advance is not to be included in advance given for interest income

Garima Prajapati Rs 10000/- The assessee paid Rs 10000/ to Garima prajapati as on 01.06.2012. Copy of ledger enclosed herewith. Interest calculated @ 12% come to Rs 1000/ while the Hon ACIT calculated interest for whole year @ 12 %

Gourav Agrawal ji Rs 500000/- There is no payment made to the Gourav Agrawal during the year 2012-13, it was a opening balance in the books of the assessee. Interest on this amount was calculated @12% by the Hon ACIT and added to the total income of the assessee.

Jitendra Prajapati ji Rs.936500/- There is no payment made to the Jitendra prajapati I during the year 2012-13, it was a opening balance in the books of the assessee. Copy of ledger enclosed herewith. Interest on this amount was calculated @12% by the Hon ACIT and added to the total income of the assessee

Jyoti Prajapati Ji Rs. 4774600/- The assessee paid Rs 4774600/ to Jyoti prajapati at various date. Copy of ledger enclosed herewith. Interest calculated @ 12% come to Rs 308800/ while the Hon ACIT calculated interest for whole year @ 12 %, instead of calculated according to the period for which the advance was given.

Ms Trading Co. Indore Rs. 350000/- There is no payment made to the Ms Trading Co. Indore during the year 2012-13, it was a opening balance in the books of the assessee. Copy of ledger enclosed herewith. Interest on this amount was calculated @12% by the Hon ACIT and added to the total income of the assessee

Pratibha Prajapati Rs.300000/- There is no payment made to the Pratibha Prajapati during the year 2012-13, it was a opening balance in the books of the assessee. Copy of ledger enclosed herewith. Interest on this amount was calculated @12% by the Hon ACIT and added to the total income of the assessee

Rakhi Prajapati Rs. 21000/- There is no payment made to the Rakhi Prajapati during the year 2012-13, it was a opening balance in the books of the assessee. Copy of ledger enclosed herewith. Interest on this amount was calculated @12% by the Hon ACIT and added to the total income of the assessee

Roopchand Prajapati Rs.49896/- There is no payment made to the Roopchand Prajapati during the year 2012-13, it was a opening balance in the books of the assessee. Copy of ledger enclosed herewith. Interest on this amount was calculated @12% by the Hon ACIT and added to the total income of the assessee

Shashi Construction Rs.1890000/- There is no payment made to the Shashi Construction during the year 2012-13, it was a opening balance in the books of the assessee. Copy of ledger enclosed herewith. Interest on this amount was calculated @12% by the Hon ACIT and added to the total income of the assessee

Shubham Coke & Coal Loan Rs. 5540950/- There is no payment made to the Shubham Cole and Coal during the year 2012-13, it was a opening balance in the books of the assessee. Copy of ledger enclosed herewith. Interest on this amount was calculated @12% by the Hon ACIT and added to the total income of the assessee

3

Tricon Plot Advances Rs.1395247/- There is no payment made to the Tricon during the year 2012-13, it was a opening balance in the books of the assessee. Copy of ledger enclosed herewith. Interest on this amount was calculated @12% by the Hon ACIT and added to the total income of the assessee

As the Hon ACIT has made an addition by disallowance of interest @12% on total advances shown in the books of the assessee, but in this advances, following accounts have opening balance and no transaction was done with that parties during the year. Hence there should be no interest on these advances.

In the above advances The advance for plot was also included which was given for the property at Nanakheda. Copy of registry is enclosed.

From the Anjali Buildon Bhopal assessee has an agreement for repair and maintenance of his house, copy of agreement is enclosed.

NAME OF PARTIES

Gourav Agrawal ji
Jitendra Prajapati
Ms Trading Co. Indore
Pratibha Prajapati
Rakhi Prajapati
Roopchand Prajapati
Shashi Construction
Shubham Coke & Coal Loan
Tricon Plot Advances

10. On consideration of Ld. AR's submissions, we find that the assessee is pointing out three fallacies in the disallowance made by AO, namely (i) Certain loans/advances were made during the year and they remained outstanding for a broken period and not for whole year, still the AO has made disallowance for full year; (ii) Certain loans/advances were mere opening balances brought forward from preceding year, they were not given during the year and still the AO has made disallowance; and (iii) Major advance of Rs. 1,95,19,500/- for purchase of a plot and Rs. 16,00,000/- for construction of house were not in the nature of advances, still the AO has made disallowance. More or less similar submissions were also made by assessee during first-appeal before CIT(A). When we examine these submissions in the light of what is noted by AO in assessment-order, we find that the AO has simply mentioned "*Hence, interest amount of Rs. 44,32,883/- was to be charged on advances given by the assessee at the average rate on which interest was also paid by the assessee.*" Thus, we find that the AO has not given any working or calculation as to how he has arrived at the disallowance of Rs. 34,32,883/-. Therefore, in absence of complete details, we are unable to adjudicate the assessee's objections. Therefore, we are of the considered view that the present case is fit for remand to AO who shall take into account the submissions of assessee, take a reasoned decision thereon and work out the correct amount of disallowance without being influenced by his previous order. Needless to mention that the AO shall give reasonable opportunities to assessee and the

assessee shall also participate in the proceedings. This ground is allowed in these terms.

GROUND NO. 2 :

11. During hearing, Ld. AR for the assessee clearly admitted that the assessee is not pressing this ground. Therefore, this ground is dismissed as not pressed.

12. Resultantly, this appeal is partly allowed for statistical purposes.

Order pronounced in the open court on 17.07.2023.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated :17.07.2023.

CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore*