

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **421/CHNY/2023**

निर्धारण वर्ष/Assessment Year: 2018-19

**Global Entropolis (Vizag)  
Private Limited.,**  
No.31, 2<sup>nd</sup> Main Road,  
Shriram House, T. Chowdaiah  
Road, Sadashivanagar,  
Bangalore – 560 080

**The Assessing Officer,**  
Vs. National Faceless Assessment  
Centre,  
Delhi.

**PAN: AADCG 1109J**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri S.Ananthan, CA &  
Ms. R. Lalitha, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 19.07.2023

घोषणा की तारीख/Date of Pronouncement

: 28.07.2023

**आदेश /ORDER**

**PER MAHAVIR SINGH, VICE PRESIDENT:**

This appeal filed by the assessee is arising out of order of the Commissioner of Income Tax (Appeals)-18, Chennai in ITA No.CIT(A),Chennai-18/10959/2017-18 dated 30.01.2023. The assessment was framed by the National Faceless Assessment

Centre, Delhi for the assessment years 2018-19 u/s.143(3) r.w.s. 144B of the Income Tax Act, 1961 (hereinafter 'the Act'), vide order dated 05.08.2021.

2. The first issue in this appeal of assessee is as regards to the order of CIT(A) restricting the disallowance made by the AO of interest expenses restricting the rate at 14% as against claimed by assessee at 16% by invoking section 40A(2)(b) of the Act. For this, assessee has raised the following ground No.2 as an effective ground:-

“2. The learned Commissioner of Income Tax (Appeals) erred in restricting the disallowance of the interest expenditure to Rs.48,36,197/- u/s 40A(2)(b) of the Act by holding that the rate of interest at 14% would be reasonable considering the fact that State Bank of India's Benchmark Prime Lending Rate as on 01/04/2017 was 13.85%”

3. The AO during the course of assessment proceedings noticed that the assessee has taken loan from others and related parties. The AO noted that the assessee has taken loan from IIFL Wealth Finance Ltd., @ 8.50% and from Aditya Birla Finance Ltd., @ 13.75%. The AO also noticed that the assessee has taken loan from related party i.e., Shriram Properties Ltd., @ 16% and accordingly, he required the assessee to explain the justification and reasonableness of payment of interest @ 16% to Shriram Properties

Ltd., in the light of provisions of section 40A(2)(b) of the Act. The assessee replied that the loan taken from Shriram Properties Ltd., @16% is unsecured loan and not a secured loan whereas the other two loans i.e., IIFL Wealth Finance Ltd., @ 8.50% and Aditya Birla Finance Ltd., @ 13.75% are secured loans by providing securities of equivalent amount of the loans. The AO was not satisfied and he restricted the interest at 12% on the loan taken from Shriram Properties Ltd., which he held as justifiable and reasonable in view of the provisions of section 40A(2)(b) of the Act. Therefore, the AO disallowed the interest paid to Shriram Properties Ltd., amounting to Rs.96,72,394/-. Aggrieved, assessee preferred appeal before the CIT(A).

4. The CIT(A) after considering the submissions and considering the benchmark prime lending rate provided by SBI as on 01.04.2017 at 13.85%, restricted the rate of interest at 14% and according to him, the same is reasonable rate of interest which could have been paid for the borrowable of loans from Shriram Properties Ltd., by the assessee. Therefore, he sustained the disallowance of interest at RS. 38,36,197/- being 2% excess of interest. Aggrieved, now assessee is in appeal before us.

5. We have heard rival contentions and gone through the facts and circumstances of the case. The Id.counsel for the assessee Shri S. Anandan, first of all stated that the loans obtained by assessee from IIFL Wealth Finance Ltd., and Aditya Birla Finance Ltd., are secured loans and which are provided by these two concerns on the basis of providing security of equivalent amount of loan, whereas the loan obtained by assessee from sister concern or related parties Shriram Property Ltd., at 16% is unsecured loan. The Id.counsel stated that the secured loans for business is obtained are mortgage of certain assets and moreover beyond that, for regular business commitments and completion of projects, the assessee has to borrow amounts through unsecured loans for which no security is required and for that a little higher rate is to be paid. The Id.counsel for the assessee said the benchmarking prime lending rate by SBI as on 01.04.2017 is at 13.85% and even taking this base, the interest paid to Shriram Properties Ltd., at 16% is quite reasonable being unsecured loan. He argued that even the lending by SBI is also always against security or warranty.

6. On the other hand, the Id.Senior DR could not controvert the above fact situation and stated that a reasonable estimate can be made and for this, he contended that the CIT(A) has already

estimated the interest rate at 14%. He supported the order of CIT(A).

7. We noted that the assessee's payment of interest to Shriram Properties Ltd., on unsecured loan @ 16% is quite reasonable in view of the fact that the benchmark prime lending rate by SBI as on 01.04.2017 was at 13.85% and that also for secured loans i.e., the assessee has to mortgage certain assets. This loan taken by assessee of Shriram Properties Ltd., @ 16% is unsecured and this is for regular business commitment and completion of projects. In view of the above, we find that the charging of interest @ 16% is quite reasonable and hence, we reverse the finding of CIT(A) on this issue and allow the appeal of assessee.

8. Coming to second issue raised by assessee by way of Ground No.3 that the intimation/processing of return u/s.143(1) of the Act is not appealable order. For this, assessee has raised the following ground Nos.3 & 3.1:-

“3. The learned Commissioner of Income Tax (Appeals) erred in dismissing the ground of appeal relating to error in computation of book profit u/s 115JB and additions made to the normal income in the intimation u/s 143(1) by holding that grounds relating to intimation u/s 143(1) can be addressed only by way of appeal preferred against the intimation u/s 143(1) and not in the appeal against the assessment order u/s 143(3).

3.1 The learned Commissioner of Income Tax (Appeals) failed to appreciate that the intimation u/s 143(1) being a summary assessment order ceased to be operative and gets merged into the order passed u/s 143(3).

9. Brief facts are that the relevant assessment year involved is AY 2018-10 and assessee filed its return of income on 31.10.2018. The CPC, Bangalore processed the return and intimation u/s.143(1) of the Act was issued on 01.10.2019. In the mean time, before issuance of intimation u/s.143(3) of the Act, the AO issued notice u/s.143(2) of the Act dated 23.09.2019. The assessee has not carried the intimation issued u/s.143(1) of the Act dated 01.10.2019 in appeal, in which the CPC, Bangalore has made adjustment of following items:-

Sl.No.	Section	Addition (in Rs.)
1.	Section 36(1)(va)	9,927
2.	Section 37	10,49,507
3.	Section 43B	24,44,959
Total		35,04,393

The assessee challenged the assessment order passed by AO u/s.143(3) r.w.s. 144B of the Act dated 05.08.2021 before the CIT(A), wherein assessee has challenged even the intimation issued by CPC, Bangalore u/s.143(1) of the Act. The CIT(A) dismissed the ground of assessee as infructuous vide para 7.7 as under:-

“7.7 Other grounds are taking the normal income assessed u/s 143(1) and deemed income u/s 115JB arrived u/s 143(1) as base for making addition / assessment u/s 143(3). These grounds relate to the order / intimation u/s 143(1), which can be addressed only in an appeal preferred if

any on such order / intimation u/s 143(1) and not on the order u/s 143(3) against which the assessee filed the present appeal. Therefore, these grounds are dismissed as infructuous.”

Aggrieved, now assessee is in appeal before the Tribunal.

10. Before us, the assessee has raised the above mentioned two grounds on the issue of whether intimation issued u/s.143(1) of the Act is appealable or not.

11. Now before us, the Id.counsel for the assessee took us through the assessment order computation part and stated that the AO has computed the income including the adjustment made u/s.143(1) of the Act vide order dated 01.10.2019 and he referred to the following:-

“5. After verification / examination of all the details called for and submitted, the income shown by the assessee is assessee and computed as under:

Computation of income under normal provisions of income

	Amount (in Rs,)
Total income as per order u/s 143(1) dated 01.10.2019	35,04,393/-
Add : Disallowance u/s 40A(2)(b) (as discussed in Para4)	96,72,394/-
Total Taxable income	1,31,76,787/-
Rounded Off	1,31,76,790/-

6. Since tax payable as per MAT provisions on income as per order u/s 143(1) dated 01/10/2019 at Rs.55,33,58,951/- u/s. 115JJB of the Income tax Act is higher than tax payable as per normal provisions, MAT income is

considered for the purpose of computation of tax liability of the assessee company.

The Id.counsel stated that the order of CPC processing the return u/s.143(1) of the Act has merged into the order passed by AO u/s.143(3) of the Act and hence, it can be challenged at this stage only. The Id.counsel for the assessee stated verbally that there are some decisions of Tribunal holding that the order u/s.143(1) of the Act is not appealable and hence, he has raised this issue by way of appeal before CIT(A) challenging the regular assessment order passed by AO u/s.143(3) r.w.s. 144B of the Act dated 05.08.2021 and instead of challenging the processing of return and intimation u/s.143(1) of the Act dated 01.10.2019. Hence, he urged that these issues be adjudicated by the Tribunal now, because the processing of return and intimation u/s.143(1) of the Act is not appealable.

12. On the other hand, the Id.Senior DR took us through the provisions of section 246A of the Act, wherein by virtue of provision of section 246A(1)(a) of the Act, appeal against an intimation u/s.143(1) of the Act is clearly provided w.e.f. 01.06.1999 by Finance Act, 1999.

13. We have heard rival contentions and gone through facts and circumstances of the case. We have gone through the main provision of section 246A of the Act and particularly clause (a) which reads as under:-

**246A. Appealable orders before Commissioner (Appeals).**—(1) Any assessee or any deductor or any collector aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against—

(a) an order passed by a Joint Commissioner under clause (ii) of sub-section (3) of section 115VP or an order against the assessee where the assessee denies his liability to be assessed under this Act or an intimation under sub-section (1) or sub-section (1B) of section 143 or sub-section (1) of section 200A or sub-section (1) of section 206CB, where the assessee or the deductor or the collector objects to the making of adjustments, or any order of assessment under sub-section (3) of section 143 except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sub-section (12) of section 144BA or section 144, to the income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;

From the above provision it is clear that appeal against an intimation u/s.143(1) of the Act is provided and the second limb clearly provides that section 246A(1)(a) of the Act enables an assessee to prefer an appeal before Commissioner (Appeals) against intimation / processing done by CPC u/s 143(1) of the Act, where the assessee objects to making of an adjustment. It means that in the present case before us the assessee has not challenged the intimation/processing of return by CPC, Bangalore passed u/s.143(1) of the Act dated 01.10.2019 and that has attained finality in the

absence of any appeal or other remedy available with the assessee. Once the appeal is provided under the statute and the assessee has not availed of the right to appeal, now he cannot appeal the same while challenging the assessment order u/s.143(3) of the Act. In term of the above, we confirm the order of CIT(A) on this issue and dismiss the appeal of assessee.

14. In the result, the appeal filed by the assessee is partly-allowed.

Order pronounced in the open court on 28<sup>th</sup> July, 2023 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 28<sup>th</sup> July, 2023

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- |                         |                          |                     |
|-------------------------|--------------------------|---------------------|
| 1. अपीलार्थी/Appellant  | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त /CIT |
| 4. विभागीय प्रतिनिधि/DR | 5. गार्डफाईल/GF.         |                     |