

**IN THE INCOME TAX APPELLATE TRIBUNAL  
SMC "A" BENCH : BANGALORE**

SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.447/Bang/2023
Assessment year : 2012-13

Shri Rajib Chowdhury, Prop. M/s. Bright Petroleum, No.40, 10 <sup>th</sup> B Main, 1 <sup>st</sup> Cross, 4 <sup>th</sup> Block, Basveshwaranagar, Bangalore – 560 079. <b>PAN: ABLPC 633L</b>	Vs.	The Income Tax Officer, Ward 6(2)(3), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri B. Srinivas, CA
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel

Date of hearing	:	24.07.2023
Date of Pronouncement	:	27.07.2023

**ORDER**

This appeal is filed by the assessee against the DIN & Order No.ITBA/APL/M/250/2022-23/1047257722(1) dated 14.11.2022 of the CIT(Appeals)-11, Bangalore for the AY 2012-13.

2. This appeal is time barred by 143 days. The assessee has filed affidavit for condonation of delay in filing the appeal stating that he is suffering from Ischiorectal Abscess, Hypertension Blood Pressure, and a Diabetic and heart patient and under medication for more than 3 months. He used to look after the business at Bangalore and also in Guwahati, Assam after his father expired during COVID-19. The Id.

AR submitted that due to above reasons, there was sufficient cause for the delay and prayed for condonation of delay.

3. After considering the rival submissions and following the judgment of the Hon'ble Apex Court in the case of *Collector, Land Acquisition Vs. MST. Katiji and Others (1987) 167 ITR 471*, I am of the opinion that there was sufficient and reasonable cause for the delay and therefore I condone the delay in filing the appeal before the Tribunal.

4. The assessee has raised the following grounds:-

- “1) That on the facts of the case, the learned Income tax officer is not right in disallowing the interest paid on Loan.
- 2) That on the facts and circumstances of case, the Learned Commissioner Appeal's should have observed that the Assessing officer has not recorded satisfaction with regard to genuineness of the transactions entered by the appellant and not verified provided an opportunity.
- 3) That the Learned Commissioner Appeal's has not verified that bank statement disbursement of loan amount and other capital statement submitted.
- 4) That the learned Commissioner Appeal's has erred both on the facts and in Law.
- 5) That the Learned Commissioner of Appeal should have examined the utilization of loan amount after loan disbursement by the Bank and the Statement of capital movement of other entity provided to justify the Loan is not diverted. The Learned Commissioner of the Appeal ignores the facts of the case and utilization of funds.
- 6) The Appellant hereby reserves the right to add, delete, or amend the grounds of appeal at the time of hearing.”

5. The brief facts of the case are that the assessee filed return of income on 11.01.2013 declaring income at Rs.20,22,208. The case was selected for scrutiny and statutory notices were issued to the assessee. From the documents submitted by the assessee, the AO observed that the assessee has debited interest of Rs.17,54,995 to the P&L account of Bright Petroleum is not correct as the loan was raised to invest in immovable property in the personal capacity. The assessee's submission that it was utilized for Bright Petroleum only was rejected by the AO for the reason that the investment in fixed assets has taken place in previous year relevant to AY 2011-12 where disallowance is made. Therefore the AO made addition of Rs.17,54,995.

6. On appeal, the CIT(Appeals) noted that the interest paid on this for AY 2011-12 was disallowed by the AO and the CIT(A) for AY 2011-12 held that the loan borrowed by assessee was in his individual capacity and diverted to his partnership firm. Therefore the addition was upheld by the CIT(A) for AY 2011-12. For the same reasons, the CIT(Appeals) for the current AY 2012-13 upheld the disallowance of Rs.17,54,995 made by the AO. The CIT(Appeals) also noted that the assessee had agreed to the disallowance before the AO and admitted that the funds were used for Bright Constructions for furtherance of his business interest. The assessee's argument that he had made payment of Rs.1,44,97,042 to IOCL from Bank of India after loan receipt on 18.06.2007 and entire loan was used for making payments for his business purpose was rejected by the Id. CIT(Appeals). The

CIT(Appeals) upheld the addition made by the AO. Aggrieved, the assessee is in appeal before the Tribunal.

7. The ld. AR submitted that the assessee obtained loan on 18.06.2007 and interest is regularly charged to the P&L account till AY 2011-12 which has not disputed by the revenue authorities. The revenue authorities have also not disproved the claim of the assessee. He further submitted that this Tribunal has remitted back the issue to the file of AO for the AY 2011-12 in ITA No.85/Bang/2018. The ld. AR of the assessee has also filed a small paper book which is placed on record.

8. On the other hand, the ld. DR relied on the orders of the lower authorities and submitted that the assessee was unable to prove that the funds have been utilized for business purpose of the assessee.

9. Considering the rival submissions, I note that the AO has disallowed the interest of Rs.17,54,995 on the loan taken by the assessee on 18.06.2007. The submission of the assessee is that the interest is claimed as revenue expenditure regularly till AY 2011-12. I note that the very same issue in the assessee's own case has for AY 2011-12 been considered by the Tribunal and the issue is remitted back to the CIT(Appeals) in ITA No.85/Bang/2018 dated 31.01.2022 with the following observations:-

“4. We have perused the submissions advanced by both sides in the light of records placed before us. We note that the utilisation of the loan by assessee has not been verified by the authorities below. In the submission filed by assessee dated 03.08.2021,

assessee has placed summary of payments made subsequent to the loan having waived. All these details along with the balance sheet from the year in which such loan was taken needs to be looked into before coming to such conclusion. We note that Ld.CIT(A) has not called for any details to verify the contentions of the assessee. The entire disallowance is based on surmises and conjectures and therefore cannot be appreciated. We are therefore inclined to remand this issue to the Ld.CIT(A) to carry out necessary verification in respect of the details filed by assessee. The assessee is thus directed to file all the relevant documents in support of its contention and the utilisation of the loan amount. The Ld.CIT(A) is directed to pass detailed order on merits in accordance with law. Needless to say that proper opportunity of being heard must be granted to assessee.”

10. Respectfully following the above decision of the coordinate Bench of the Tribunal in assessee’s own case for AY 2011-12, since the facts are identical for the present year AY 2012-13, I remit this issue to the file of CIT(Appeals) for fresh consideration and decision as per law on the same terms, after giving reasonable opportunity of being heard to the assessee. The assessee is directed to produce necessary documents and substantiate its claim and avoid unnecessary adjournment for early disposal of the case.

11. In the result, the appeal by the assessee is allowed for statistical purposes.

Pronounced in the open court on this 27<sup>th</sup> day of July, 2023.

Sd/-  
(LAXMI PRASAD SAHU )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 27<sup>th</sup> July, 2023.

*/Desai S Murthy /*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.