

**| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"A" BENCH, KOLKATA**

**BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER**  
**&**  
**DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER**

**I.T.A. No. 21/Kol/2023**  
**Assessment Year: 2013-14**

<b>M/s. Mahabir Traders</b> 53, Nalini Seth Road Kolkata - 700007 <b>[PAN: AAFFM3436R]</b>	Vs	<b>Income Tax Officer, Ward-44(3),</b> <b>Kolkata</b>
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<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
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Assessee by :	Shri Miraj D. Shah, A/R
Revenue by :	Shri Abhijit Kundu, CIT, D/R

सुनवाई की तारीख/**Date of Hearing** : 04/05/2023  
घोषणा की तारीख /**Date of Pronouncement**: 03/08/2023

**आदेश/O R D E R**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER :**

The captioned appeal has been preferred by the assessee against the order of National Faceless Appeal Centre, (hereinafter referred to as "the Id. CIT(A)"), passed u/s 250 of the Income Tax Act, 1961 (hereinafter 'the Act') dated 14/11/2022, for Assessment Year 2013-14.

2. The assessee raised the following grounds of appeal:-

*"1) For that in the facts and circumstances of the case the Ld Commissioner of Income Tax Appeals erred in upholding the addition of Rs.76,00,000 on account of unsecured loan u/s 68 of the IT Act 1961 was bad in law and was not justified and thus the same deserves to be deleted.*

*2) For that in the facts and circumstances of the case the Ld Commissioner of Income Tax Appeals erred in upholding the addition of Rs.32,03,363 being based on hypothetical calculation made by the Assessing Officer was arbitrary, bad in law and was not justified and thus the same deserves to be deleted.*

- 3) *For that in the facts and circumstances of the case the Ld Commissioner of Income Tax Appeals erred in upholding the disallowance of part of the interest amounting to Rs.57,000 paid to Ajit Kr Bahety and Suman Somani was purely arbitrary this was not justified and thus the same be deleted.*
- 4) *For that the order passed by the Ld Commissioner of Income Tax appeal was in violation of principles of natural justice and hence the same be set aside.*
- 5) *For that the Assessment order passed was in violation of principals of natural justice and hence the entire proceeding was bad in law and thus the assessment order be cancelled/ quashed.*
- 6) *For that the learned CIT (Appeals) erred in confirming the interest u/s 234 A/B/C the same was unjustified and hence the same be deleted.*
- 7) *The appellant craves leave to produce additional evidences in terms of Rule 29 of the Income Tax (Appellate Tribunal) Rules 1963.*
- 8) *The appellant craves leave to press new, additional grounds of appeal or modify, withdraw any of the above grounds at the time of hearing of the appeal."*

3. Brief facts of the case are that the assessee is a partnership firm engaged in the business of selling cigarettes and other FMCG goods of ITC. Income of Rs.8,21,950/- declared in the e-return filed for Assessment Year 2013-14 on 16/03/2009. Case selected for scrutiny through CASS followed by the issuance of notice under section 143(2) and 142(1) of the Act. Various informations were called for in respect of the directions given by the ld. Pr. CIT in the order under section 263 of the Act, dt. 11/09/2017 and based on such directions, assessment was completed making the additions u/s 68 of the Act of unsecured

loans at Rs.76,00,000/-, unexplained cash at Rs.32,03,363/- and excess interest charged at Rs.57,000/-. Income assessed at Rs.1,18,45,093/-.

3.1. The assessee challenged these additions before the Id. CIT(A) but failed to succeed. The Id. CIT(A) summarily dismissed all the grounds of the assessee in a common finding, which reads as follows:-

*"I have carefully considered the facts of the case and found that there is no need to interfere the addition made by AO u/s 263/143(3) of the IT Act, total amounting Rs. 1,08,60,363/-. During the assessment proceedings the appellant has provided ample opportunity for confirmations and substantiate the identity, creditworthiness of the lender and the genuineness of the transaction. However, in spite of extending sufficient opportunities the appellant failed the furnished any shred of details/evidences to substantiate the claims made by it in the return of income. Hence the objection raised by the appellant is fully devoid of merits of assessment order so the addition made by AO is sustained and ground raised by the appellant is hereby dismissed. The AO has made addition on cash deposit in his bank accounts, since the appellant has not produced documentary evidence in support of his claim.*

*8. Considering the entirety of facts, circumstances and material on record and looking into preponderance of probabilities here the appellant has miserably failed to substantiate its claim treated as unexplained money and has also not even been able to establish as to why higher interest on loan has been paid to selected persons, therefore, the AO is fully justified in making/confirming the disallowances amounting of Rs1,08,60,363/-, found as unexplained money as well as on account of higher interest paid to few persons. In this condition the addition made by AO factually and legally correct is upheld and the plea of the appellant on this issue is dismissed being devoid of any merits.*

*09. Therefore, considering the above factual and legal position, the appeal filed by the appellant is liable to be dismissed as it can be naturally inferred that the appellant has nothing to say.*

*10. Thus, the above facts and circumstances of appellant case the additions made resulting in completion of assessment at a total income of Rs.1,18,45,090/- for the A.Y 2013-14 is hereby confirmed and ground raised by appellant is dismissed.*

*11. In the result, the appeal is therefore, dismissed."*

4. Aggrieved the assessee is now in appeal before this Tribunal.
5. The Id. Counsel for the assessee vehemently argued referring to the paper book containing 68 pages, filed before us and stated that so far as the addition under section 68 of the Act is concerned, regarding unsecured loan taken from M/s. G. Textile Pvt. Ltd., all the details necessary to explain the alleged sum has been filed to which no discrepancy has been found by the Assessing Officer. Further regarding unexplained cash in hand, it was submitted that the Id. Assessing Officer has made this addition on the basis of surmises and conjectures applying the theory which is far from reality. Thus, such addition cannot be sustained. So far as the addition for interest is concerned, it was submitted that the interest rate @ 18% has been charged and the same is not excessive and the rate of interest varies from case to case as well as the market saturation. Reliance was placed on the decision of the coordinate bench in the case of *ACIT vs. Sarthak Innovation (P) Ltd. in ITA Nos. 228 to 230/Ind/2021; order dt. 30/03/2023.*
6. On the other hand, the Id. D/R vehemently argued supporting the order of the lower authorities.
7. We have heard rival contentions and perused the material placed before us.
8. Ground No. 1, of the assessee's appeal relates to addition of a section 68 of the Act at Rs.76,00,000/-. We notice that the assessee has taken unsecured loan from M/s. G Textile Pvt. Ltd.. Copy of the

income tax return of the alleged cash creditor along with audited financial statement have been filed. In the balance sheet of M/s. G Textile Pvt. Ltd., sufficient funds in the form of share capital and reserves and surplus are available to explain the loan given to the assessee. Confirmation of accounts, reveals that all the transactions are taken place through proper banking channels and certain loans during the year and have been repaid also. Interest on the unsecured loan have been charged and tax has been deducted at source. Bank statement of M/s. G Textile Pvt. Ltd., has also filed wherein there are regular transactions. Except for the fact that Nil income has been declared in the return of M/s. G Textile Pvt. Ltd., the revenue authorities have failed to dispute any of the facts. It is also an admitted fact that to the notices under section 133(6) of the Act, due compliance was made before the completion of assessment. The Id. Assessing Officer has himself stated in the assessment order that notice under section 133(6) of the Act were duly complied and the assessee has submitted the copy of the auditor's report and statements of accounts and therefore the identity and creditworthiness of the cash creditors and genuineness of the transactions has been proved with the help of documentary evidences as well as stating the fact that the assessee company needs working capital for its regular business transactions and apart from the alleged cash creditors there are other loan creditors also which have been accepted by the revenue authorities. Under these given facts and circumstances, when all the ingredients for explaining the nature and source of the credit sum appearing in the books in the

form of unsecured loan has been explained by the assessee, in our considered view addition under section 68 of the Act was not warranted and the same is hereby deleted. Accordingly, Ground No. 1 raised by the assessee is allowed.

9. Ground No. 2, is regarding the addition for unexplained cash in hand at Rs. 32,03,363/-.

It is submitted by the Id. Counsel for the assessee that, the said addition is based on hypothetical calculation which is arbitrary and bad in law. For examining these facts, we take note of the finding of the Assessing Officer at page 3 of the assessment order, which reads as follows:-

*"B. Point (c) & (d): Regarding average cash balance (highlighted by the learned CIT), total cash deposited in bank accounts during the F.Y. 2012-13 was Rs 47,73,86,370/- and thus average cash sales comes to Rs.16 lacs(approx) taking 300 working days in a year. But it is found only holiday of 4 days during the last week of the F.Y. Rs. 1.91,78,605/- as shown as cash in hand due to non-deposit of the same in bank is not at all tenable. In this respect the assessee's contention is not acceptable, therefore disallowance in respect of cash deposit is calculation as under :-*

*Total cash deposited during the year = Rs. 47,73,86,370/-  
So, average cash deposit = 477386370/300 i.e Rs. 15,91,288/-  
Cash in hand on last 4 days ( mentioned in bank holidays) Rs.1,91,78,605/-  
So, average cash = 19178605/4 i.e, Rs. 47,94,651/-  
So, the difference of last 4 days average cash and total average cash deposit (Rs.47,94,651/- minus Rs. 15,91,288/-) i.e. Rs. 32,03,363/- is being disallowed and added back to the total income of the assessee."*

10. From the above working of the Id. Assessing Officer, we notice that he has made certain calculations of the availability of cash on the basis of purely surmises and conjectures. We fail to understand how can the Assessing Officer visualize the business transactions of a concern and make an estimate disregarding the fact that the cash

received from sales are duly deposited in the bank account and all the entries are appearing in the audited financial statements. The Id. Assessing Officer has himself observed that cash of Rs.47,73,86,370/-, has been deposited by the assessee in bank account and thereafter calculated average cash deposit divided by cash deposit of 300 days. Then moving a step further, the Id. Assessing Officer has calculated the cash in hand available with the assessee in the last four days. All these working of the Id. Assessing Officer are baseless and far from truth and reality, and the said addition is made on surmises and conjectures which have no legs to stand for. It was for the Assessing Officer to first call for the cash book of the assessee and then pinpoint any such discrepancy in the cash book. In the absence of such an exercise being carried out by the Id. Assessing Officer, leaves us with no option except deleting the said addition of cash in hand to the tune of Rs.32,03,363/-. Accordingly, Ground No. 2 raised by the assessee is allowed.

11. Ground No. 3 is regarding the disallowance of interest at Rs.57,000/- paid to Ajit Kr. Bahety and Suman Somani. In this case, the Id. Assessing Officer has made an observation that the normal market rate of interest is 12% but the assessee has charged 18% and, therefore, differential amount is calculated as Rs.57,000/-. No reference has been made in the light of the provisions of section 40A(2)(b) of the Act, where in case the Assessing Officer is of the opinion that the expenditure is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment

is made then such excessive or unreasonable amount may be disallowed. But for coming to this conclusion the ld. Assessing Officer has to first observe that how such payment is excessive and what is the fair market value of such services. Rate of interest chargeable depending on case to case and the available circumstances. In case the loans are secured, the rate of interest is lower and in case of unsecured loans rate of interest is higher. Even the financial institutions also charge hefty rate of interests, for e.g., the credit card companies charge anywhere from 24% to 36%. Therefore, general observation by the ld. AO that the rate of interest is chargeable @ 12% whereas assessee has charged interest by applying rate of 18% has no sound basis and, therefore, the said addition deserves to be deleted. Accordingly Ground No. 3 raised by the assessee is allowed.

12. All the other grounds being general and consequential in nature, have not been pressed by the assessee and the same are dismissed as such.

13. The result appeal of the assessee is allowed.

**Order pronounced in the Court on 3<sup>rd</sup> August, 2023 at Kolkata.**

*Sd/-*

**(SANJAY GARG)  
JUDICIAL MEMBER**

*Sd/-*

**(DR. MANISH BORAD)  
ACCOUNTANT MEMBER**

Kolkata, Dated 03/08/2023  
\*SC SrPs

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

**Assistant Registrar**  
आयकर अपीलीय अधिकरण  
**ITAT, Kolkata**