

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**VIRTUAL HEARING**

**BEFORE: DR. S. SEETHALAKSHMI, JM  
&  
SHRI RATHOD KAMLESH JAYANTBHAI, AM**

**ITA No. 61 to 67/Jodh/2023**  
**(ASSESSMENT YEAR- 2013-14 to 2019-20)**

Shyamsundar Soni Karta HUF C.S. Jewells, Sunaron Ki Badi Guwad, Bikaner	Vs	ACIT, Central Circle, Bikaner
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN NO. AALHS 3053 G</b>		

<b>Assessee By</b>	Sh. Amit Kothari, C.A.
<b>Revenue By</b>	Sh. Lovish Kumar, CIT-DR & Sh. S. M. Joshi, JCIT-DR
<b>Date of hearing</b>	05/07/2023
<b>Date of Pronouncement</b>	07/08/2023

**ORDER**

PER: RATHOD KAMLESH JAYANTBHAI, AM

These are seven appeals filed by the assessee and is directed against the order of the Id. Commissioner of Income Tax (Appeals)-Udaipur-2 [hereinafter referred to as (Id. CIT(A)] dated 24.02.2023, 25.02.2023 & 27.02.2023 for the Assessment Years 2013-14 to 2019-

20, which in turn arise out of an order passed by ACIT, Central Circle, Bikaner passed u/s. 147 of the Income Tax Act, 1961 [ here in after referred to act "Act"] on 12.03.2022, 05.03.2022, 07.03.2022 & 29.09.2021

2. Since, the facts of these cases are identical, we have heard these cases together and passing the order together. The facts and grounds are taken from the folder of Sh. Shyamsundar Soni Karta HUF in ITA No. 61/Jodh/2023 for A. Y. 2013-14 and this case is taken as lead case. In this appeal the assessee has raised following grounds:-

*"1. The Id. CIT(A) has erred in sustaining the order passed by the Id. AO which is bad in law and bad on facts and is contrary to the principles of natural justice. The proceedings u/s 148 are bad in law and bad on facts.*

*2. The Id. CIT(A) has erred in sustaining the addition on account of non disclosure of interest earned on alleged cash loans.*

*3. The Id. CIT(A) has erred in sustaining charging of tax u/s 115BBE of the Act.*

*4. The Id. CIT(A) has erred in sustaining interest charged u/s 234A, 234B and 234C of the Act.*

*5. The appellant crave liberty to add, amend, alter or modify any of the ground of appeal on or before its hearing before your honours."*

3. The fact as culled out from the records is that the In this case, Shri Shyam Sunder Soni, Karta of afore-said HUF was arriving from

Mumbai to Jaipur on 16.09.2018 by flight carrying jewellery having weight around 2.4 Kilograms. He was examined at Jaipur airport by the department. The statement of Shri Shyam Sunder Soni was recorded u/s 131 of the Act wherein he claimed that the said jewellery is a part of stock of his proprietary concern M/s CS Jewells, Bikaner. He had submitted an approval Challan having value of said Jewellery to the tune of Rs. 6,31,196 and gross weight to 2116.03 grams to substantiate his claim. Whereas, the Government approved Valuer has determined the value of afore-said jewellery at Rs. 69,00,400/-. Since, the Karta of said proprietary HUF failed to satisfactorily explain the reason for said difference and discrepancy, therefore, a survey proceedings u/s 133A of the Income Tax Act, 1961 (hereinafter referred as 'the Act) was carried out at business premises of said proprietorship concern viz. M/s CS Jewells, Sunaron Ki Badi Guwad, Bikaner on 17.09.2018 by the department. The assessee e-filed its return of income for the concerned assessment year 2013-14 on 17.09.2013 declaring his total income of Rs. 5,38,060/- u/s 139(1) of the Act.

3.1 During the course of survey action u/s 133A of the Act carried out by the department on 17.09.2018 at business premises of HUF namely M/s CS Jewells, Bikaner, various loose papers containing details of giving unaccounted cash loan on interest were found and impounded as Annexure-AS-1. Further, during the post survey proceeding, Karta of assessee HUF, Shri Shyam Sundar Soni, submitted a working of peak balance worked on basis of impounding incriminating material and admitted a sum of Rs. 93.10 Lakhs as the undisclosed income of the assessee HUF for different Assessment Years and for current Assessment year assessee surrendered a sum of Rs. 20,00,000/-.

3.2 The Id. AO noted that during the Survey proceedings, various loose papers containing details of giving unaccounted cash loan given on interest were found and impounded as per annexure AS – 1. Further, during the post-survey proceedings, Karta of HUF, Shri Shaymsundar Soni, submitted a working of peak balance worked on the basis of impounding, incriminating material and admitted a sum of Rs.93.10,00,00 as the undisclosed income of the HUF for the different assessment years. For the year under consideration amount of

Rs.20,00,00 was admitted as the undisclosed income of the assessee in respect of case loan for the year under consideration that is the assessment year 2013–14. The assessing officer, noted that the assessee himself surrendered the amount disclosed as income, the same was accepted as worked out. The assessing officer, further noted that the assessee surrendered only the loan amount given in cash, however, he did not surrender any undisclosed interest income that the HUF had earned upon loan given in cash. Therefore, the assessing officer has on this 20,00,00 disclosed by the assessee, calculated and notional interest of Rs.90,000 calculated at the rate of 1.5 percentage per month for the period January 13 to March 13 as undisclosed interest income of the assessee and added the same in the return of income filed by the assessee.

4. Aggrieved from the order of the DCIT/ACIT, assessee preferred an appeal before the Id. CIT(A). A propose to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

“7.3. I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order of the Income tax act, 1961 for the year under consideration.

The argument put forth by the appellant are discussed as under-

It is argued that there were certain transactions where loan on interest was taken by the appellant and some money was advanced to some persons but the appellant could not explain any loan taken and considered all the loans as his own funds and surrendered it by considering additional income. Therefore, question of interest do not arise.

The appellant is claiming that there was some interest expenditure on loans taken and some interest income on loans given. However, he was not able to provide details about the loans taken by it. Therefore, he owned up these amounts as his own money. When he has owned up the amounts as his own money then there is no question of interest expenditure. However, the interest earned by the appellant as reflected in the impounded documents is chargeable to tax. The appellant has not included this interest in the return of income filed. Therefore, the Assessing officer has worked out the amount of interest earned by the appellant during various years. The working made by the assessing officer is based on the impounded material and no flaw is indicated by the appellant in the working of the interest. Therefore, no interference is required to be made in the addition made by the assessing officer with regard to interest on cash loans of Rs. 90000/- during the year.

The appellant has claimed that its facts are identical to the case of Highway Construction Company Pvt Ltd Vs CIT (1993) 199 ITR 702. However, in the para reproduced in the reply itself it is found in that case that there was no finding of fact that loan was granted on interest. The finding of the Income-Tax officer is that the assessee could have collected interest. Facts of the present case are entirely different. Here, interest is charged by the appellant as per impounded documents. The appellant has not denied the fact that interest was charged by him on the cash loans. Therefore, this decision is not found applicable on the facts of the case.

In the case of Red Fort Shahjahan Properties Pvt Ltd ITA 742/Del/2020 recovery of principal amount was doubtful. This is not the case of the appellant. Here no claim is made by the appellant that recovery was doubtful. Hence, this decision is not found applicable

In the case of Mangilal Rameshwar Lal Soni Vs ACIT (2004) 83 TTJ (Jd) 770 reasonable expenses should be allowed. Here issue is not of allowing expenditure. Hence, this decision is not found applicable.

In the case of Adeshwar Jain Vs ITO (2006) 35 Taxworld 150 (ITAT) (Jd.) and Anand Prakash Soni Vs DCIT (2006) 101 TJ (Jd) 97 ignoring of cash flow statement was not found justified. However, there is no issue of ignoring cash flow statement in this case. Hence, this decision is not found applicable.

In case of SMC Brokers Limited Vs DCIT 109 TTJ 700 the issue was whether the impounded diary belongs to the assessee. This is not the issue in the case of the appellant.

In the case of Atul Kumar Jain Vs DCIT 64 TTJ 786 the issue was absence of corroborative Material evidence. In the present case there are corroborative material in the form of impounded papers which shows charging of interest by the appellant at the rate of 1.5 percent per month.

In view of the above facts the decision of the Assessing Officer is found to be justified.

This ground of appeal is treated as dismissed.

5. Feeling dissatisfied with the above finding of the Id. CIT(A), the assessee preferred this appeal before the tribunal on the grounds as raised here in above in para 2. The Id. AR appearing on behalf of the assessee reiterated the submission so filed before the Id. CIT(A) and has filed the paper book containing following evidences:

S. No.	Particulars	Pages
1	Copy of written submissions filed before Id. CIT(A) Udaipur	1-24
2	Statements of appellant u/s 131 recorded on 17.10.2018	25-28
3	Statements of appellant's son Sandeep Soni u/s 131 recorded on 16.10.2018	29-32
4	Statements of appellant on 17.09.2018 during survey proceedings.	33-47
5	Working of peak credit which was surrendered during the survey proceedings.	48-49

5.1 In addition to the above Id. AR of the assessee submitted that during the course of survey certain documents were impounded which contained certain transactions of taking money on loan and advances

of money to some persons. The peak amount was computed and on the basis of all these documents year wise working was made. These amounts were accepted as appellant's own money. The details of year wise surrender of income computed and offered is as under:

Asst Year	Surrender Income
2013-2014	20,00,000
2014-2015	Nil
2015-2016	6,00,000
2016-2017	36,50,000
2017-2018	20,60,000
2018-2019	5,00,000
2019-2020	5,00,000
TOTAL	93,10,000

The Id.AR of the assessee submitted that the peak amount so computed was offered as income even during survey and was duly included in the returned income and had also been accepted in the assessment and no questions were raised about the computation of peak. Thus, from the said papers total amount of Rs. 93,10,000/- was surrendered in different years as computed here in above. These amount jotted down in these papers includes the interest charged / received and when all the entries were duly considered in the working of the peak, and the money being accepted as assessee own money. In the statement so recorded there was no question of estimating interest on such amount so surrendered and included in income and

interest has been computed in addition to the peak so calculated @ 1.5 % on the presumption and assumption that the said advances are all continuing till the assessment year 2018-19. The Id. AR of the assessee relying on the Instruction F. No. 2/48/68-IT(Inv.), dated 26th February, 1969 issued by the CBDT, where in it was clarified that the net worth basis can be usefully employed in cases where account books are not available or the other data available is not adequate. It can also be used as a check to determine the creativeness of the income worked out on 'source basis'. Thus, once the income based on the loose paper is computed on peak theory/Net worth basis it includes the interest income which the Id. AO and Id. CIT(A) could not appreciate and have made the addition merely on estimate basis and without any evidences. Thus, the Id. AR of the assessee submitted that the A.O. has estimated the interest income on his own hypothetical assumptions and presumptions. The calculation of interest by the A.O. is also wholly unlawful and unsustainable in law. The entire addition is imaginary and warrants deletion which is calculated at Rs. 90,000/- for the year under consideration. To support this view the Id. AR of the assessee relied upon the following decisions:

- CIT vs. EXCEL INDUSTRIES LTD. (2013) 358 ITR 295 (SC)

Income—Benefit under Advance licences and duty entitlement pass book—Year in which Taxable—In its return, assessee claimed deduction of advance licence benefit receivable and duty entitlement pass book benefit receivable—These benefits related to entitlement to import duty free raw material under relevant import and export policy by way of reduction from raw material consumption—AO stated that taxability of benefits was covered u/s 28(iv) which provides that value of any benefit or perquisite, whether convertible into money or not, arising from a business or a profession is income—According to AO, along with an obligation of export commitment, assessee gets benefit of importing raw material duty free—CIT(A) followed conclusion of ITAT in A.Ys. 1999-2000 and 2000-01 and held that advance benefits ought not to be taxed in this year—ITAT upheld view of CIT(A)—Held, applying three tests laid in various decisions, namely, whether income accrued to assessee is real or hypothetical; whether there is a corresponding liability of other party to pass on benefits of duty free import to assessee even without any imports having been made; and probability or improbability of realisation of benefits by assessee considered from a realistic and practical point of view, it was quite clear that in fact no real income but only hypothetical income had accrued to assessee and Section 28(iv) would be inapplicable—Secondly, consistent view had been taken in favour of assessee, starting with A.Y. 1992-93, that benefits under advance licences or under duty entitlement pass book do not represent real income of assessee—Thus, there was no reason to take a different view unless there are very convincing reasons, none of which had been pointed out by revenue—Thirdly, there was no dispute that in subsequent FY, assessee did make imports and did derive benefits under advance license and duty entitlement pass book and paid tax thereon—Therefore, it was not as if revenue has been deprived of any tax—Rate of tax remained same—There was, thus, no need for revenue to continue with this litigation.

- GODHRA ELECTRICITY CO. LTD. vs. CIT (1997) 225 ITR 746 (SC)

Under the Act income charged to tax is the income that is received or is deemed to be received in India in the previous year relevant to the year for which assessment is made or on the income that accrues or arises or is deemed to accrue or arise in India during such year. The computation of such income is to be made in accordance with the method of accounting regularly employed by the assessee. It may be either the cash system where entries are made on the basis of actual receipts and actual outgoings or disbursements or it may be the mercantile system where entries are made on accrual basis, i.e., accrual of the right to receive payment and the accrual of the liability to disburse or pay. If the accounts are maintained under the mercantile system what has to be seen is whether income can be said to have really accrued to the assessee-company. Even though the assessee-company was following the mercantile system of accounting and had made entries in the books regarding enhanced charges for the supply made to the consumers, no real income had accrued to the assessee-company in respect of those enhanced charges in view of the fact that soon after

the assessee-company decided to enhance the rates in 1963 representative suits (Civil Suits Nos. 152 of 1963 and 50 of 1964) were filed by the consumers which were decreed by the trial Court and which decree was affirmed by the appellate Court and the single Judge of the High Court and it is only on 8th Dec., 1968 that the Letters Patent Appeals filed by the assessee-company were allowed by the Division Bench of the High Court and the said suits were dismissed. But appeals were filed against the said judgment by the consumers in this Court and the same were dismissed by the judgment of this Court dt. 26th Feb., 1969. Shortly thereafter, on 19th March, 1969, the Under Secretary to the Government of Gujarat wrote a letter advising the assessee-company to maintain the status quo for the rates to the consumers for at least six months and the Chief Electrical Inspector was directed to go through the accounts of the assessee-company from year to year and to report to the Government about the actual position about the reasonable returns earned by the assessee-company. On 16th May, 1969 another representative suit (Suit No. 118 of 1969) was filed by the consumers wherein interim injunction was granted by the Court and which was finally decreed in favour of the consumers on 23rd June, 1974. It would thus appear that after the decision was taken by the assessee-company to enhance the charges it was not able to realise the enhanced charges on account of pendency of the earlier representative suits of the consumers followed by the letter of the Under Secretary to the Government of Gujarat and the subsequent suit of the consumers and during the pendency of the subsequent suit the management of the undertaking of the assessee-company was taken over by the Government of Gujarat under the Defence of India Rules, 1971 and the undertaking was subsequently transferred to the Gujarat State Electricity Board. It is no doubt true that the letter addressed by the Under Secretary to the Government of Gujarat to the assessee-company had no legally binding effect but one has to look at things from practical point of view. The question whether there was real accrual of income to the assessee-company in respect of the enhanced charges for supply of electricity has to be considered by taking the probability or improbability of realization in a realistic manner. If the matter is considered in this light, it is not possible to hold that there was real accrual of income to the assessee-company in respect of the enhanced charges for supply of electricity which were added by the ITO while passing the assessment orders in respect of the assessment years under consideration. The AAC was right in deleting the said addition made by the ITO and the Tribunal had rightly held that the claim at the increased rates as made by the assessee-company on the basis of which necessary entries were made represented only hypothetical income and the impugned amounts as brought to tax by the ITO did not represent the income which had really accrued to the assessee-company during the relevant previous years. The High Court was in error in upsetting the said view of the Tribunal.—[CIT vs. Godhra Electricity Co. Ltd.](#) (1983) 140 ITR 657 (Guj) ; [CIT vs. Shoorji Vallabhdas & Co.](#) (1962) 46 ITR 144 (SC) ; [CIT vs. Birla Gwalior \(P\) Ltd.](#) (1973) 89 ITR 266 (SC) ; [Poona Electric Supply Co. Ltd. vs. CIT](#) (1965) 57 ITR 521 (SC) ; [State Bank of Travancore vs. CIT](#) (1986) 158 ITR 102 (SC) and [H.M. Kashiparekh & Co. Ltd. vs. CIT](#) (1960) 39 ITR 706 (Bom) : TC 39R.791 applied.

## ✓ Highway Construction Company P.Ltd. vs. CIT 199 ITR 702

- In view of the aforesaid submissions and judgments, it is crystal clear that the impugned addition of alleged income made is not the real income but it only represents an imaginary and hypothetical income, which is legally not sustainable.”

6. The Id DR is heard who has relied on the findings of the lower authorities and supported the addition of the interest made by the assessing officer is fair and looking to the facts and circumstances of the case be sustained.

7. Heard the parties, perused the material placed on record and gone through the judicial precedence cited to drive home to the respective contentions so raised by the parties. Before us the Id. AR of the assessee fairly accepted that ground no.1 challenging the assessment u/s. 148 of the act is not pressed. Based on that submission ground no. 1 stands dismissed.

7.1 So, far as ground no. 2 is concerned it is noted that in the case a survey was conducted at the premises of the assessee. In the proceeding certain documents were impounded which contained transaction of taking money on loan and advances of money to some

persons. Based on these loose papers are found the assessee in the statement so recorded surrendered the peak worked out as income of the of the period based on these loose papers and the peak worked out of each of the year is as under:

Asst Year	Surrender Income	Notional Interest income computed Rs.
2013-2014	20,00,000	90,000
2014-2015	NII	3,60,000
2015-2016	6,00,000	5,37,000
2016-2017	36,50,000	11,68,000
2017-2018	20,60,000	20,85,000
2018-2019	5,00,000	25,17,000
2019-2020	5,00,000	25,46,200
TOTAL	93,10,000	

This peak as worked out is duly accepted and offered in the return of income filed by the assessee. In the assessment proceeding the Id. AO for the A. Y. 2013-14 worked out the interest @ 1.5 % per month from January to March at Rs. 90,000/- [  $20,00,000 \times 1.5\% \times 3 = 90,000$  ] and so on the subsequent years presuming that the said advances are all continuing and therefore, he estimated the interest income as computed and tabulated here in above table and made the addition of notional interest on that money advanced. The Id. CIT(A) confirmed the finding of the Id. AO holding that the assessee as per impounded documents has not denied to the fact that interest was charged by him on the cash loans and therefore, the decision cited by the assessee

before him was not considered and thus confirmed the addition of notional interest. Before us, the Id. DR did not dispute the working of the peak and has supported the order of lower authorities and prayed to sustain the addition of notional interest not offered by the assesses. After considering the all the factual aspect of the case on hand it is not disputed the assessee has based on the incriminating material correctly worked out the peak and has offered the same in the statement so recorded and the same is also not found fault in the assessment proceedings. As argued by the Id. Counsel for the assessee that the so called instructions or guidance Note F.No.2/48/68/IT(IMV) dated 26.2.1969 is admittedly issued by the CBDT. It makes no difference whether it is circular or instructions or guidance notes issued by the CBDT. The subordinate authorities are required to follow the same and when the board has instructed to accept the working on net worth basis and the working of the said net worth basis from the incriminating material did not found any error and therefore, again the revenue on the asset/advance cannot add the notional income of the assessee and that too without finding any fault in the working of the assessee based on the material already on record. There is no finding controverting the fact that working made by

the assessee for the advance so given is incorrect and the net assets based on the working is without interest earned by the assessee. Even if it so the same is also forms part of the assets based on which the peak is worked out. Therefore, we are of the considered view that no notional income can be added when the assessee has already offered the income based on the material found which is not disputed that the working / noting made on those papers are including the interest or not and in the absence of the clear finding not recorded in the order of the lower authority and based on the instruction no. F.No.2/48/68/IT(IMV) dated 26.2.1969 the assessee has already offered the net worth basis and the working so submitted was also not disputed to that aspect by the Id. AO through the Id. DR before us also. Not only that no evidence were filed before us that the interest is still worked out and the net worth calculated by the assessee does not include the interest earned so far by the assessee. Thus, in the absence of this working or evidence and considering the instruction of the board which are binding to the lower authorities while calculating the income of the assessee on estimated basis and once one method of calculating the income is adopted which is net worth basis the Id. AO erred in adding the further amount as interest. Therefore, we are of the considered

view that the additions are unlawful and therefore the same is vacated. In terms of these observations the ground no. 2 raised by the assessee is allowed.

7.2 The ground no. 3 raised by the assessee is not emanating from the order of the Id. CIT(A) and the assessee has not raised prayer for raising this ground as additional ground the same is not required to be adjudicated as not arising out of the order of the Id. CIT(A) and therefore, the same is not required to be adjudicated upon by us.

7.3 The ground no. 4 is relating to the charging of interest which is consequential in nature and ground no. 5 being general in nature the same is not required to be adjudicated.

8. In terms of these observations the appeal of the assessee in ITA No. 61/Jodh/2023 is partly allowed.

9. The fact of the case in ITA Nos. 62 to 67/Jodh/2023 are similar to that of the assessee's own case in ITA No. 61/Jodh/2023. We have heard both the parties and perused the materials available on

record and bench feel that the issues raised by the assessee in ITA Nos. 62 to 67/Jodh/2023 are equally similar on set of facts and grounds except the amount disputed in each year. Therefore, it is not imperative to repeat the facts and various grounds raised by both the parties. Hence, the bench feels that the decision taken by us in ITA No. 61/Jodh/2023 for the Assessment Year 2013-14 shall apply mutatis mutandis in ITA Nos. 62 to 67/Jodh/2023 for the Assessment Years 2014-15 to 2019-20. In the results the appeal filed by the assessee in ITA Nos. 62 to 67/Jodh/2023 are partly allowed.

In the results, all seven appeals of the assessee are partly allowed.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-  
(Dr. S. Seethalakshmi)  
Judicial Member

Sd/-  
(Rathod Kamlesh Jayantbhai)  
Accountant Member

Dated : 07/08/2023  
\*Ganesh Kumar, PS

Copy to:

1. The Appellant
2. The Respondent

3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar  
Jodhpur Bench