

आयकर अपीलीय अधिकरण न्यायपीठ नागपूर में ।
IN THE INCOME TAX APPELLATE TRIBUNAL, NAGPUR

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.05/NAG/2018
निर्धारण वर्ष / Assessment Year : 2013-14

Mr. Ravi Wadhvani,
Kothadi Bazar,
Akola – 444001

PAN : AARPW6979K

.....अपीलार्थी / Appellant

बनाम / V/s.

ACIT, Akola Circle,
Akola

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.06/NAG/2018
निर्धारण वर्ष / Assessment Year : 2013-14

Mr. Bherumal Wadhvani,
Kothadi Bazar,
Akola – 444001

PAN : AADPW6842M

.....अपीलार्थी / Appellant

बनाम / V/s.

ACIT, Akola Circle,
Akola

.....प्रत्यर्थी / Respondent

Assessee by : Shri Mahavir Atal
Revenue by : Shri Amol Khairnar

सुनवाई की तारीख / Date of Hearing : 20-07-2023
घोषणा की तारीख / Date of Pronouncement : 22-08-2023

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

These two appeals filed by the different assesseees against the common order dated 19-09-2017 passed by the Commissioner of Income Tax (Appeals)-1, Nagpur [‘CIT(A)'] for assessment year 2013-14.

2. Since, the issues raised in both the appeals are similar basing on the same identical facts. Therefore, with the consent of both the parties, we proceed to hear both the appeals together and to pass a consolidated order for the sake of convenience.

3. First, we shall take up appeal in ITA No. 05/NAG/2018 for A.Y. 2013-14.

4. The sole ground raised by the assessee challenging the action of CIT(A) in restricting the addition of Rs.1,34,735/- made by the AO on account of interest expenditure as against Rs.7,51,422/-.

5. We note that the assessee claimed interest payment to the parties at Rs.6,73,670/- and to bank at Rs.77,752/-. According to the AO, the assessee paid interest @ 10.50% and 10.75% to State Bank of India and Akola Janta Commercial Co-op. Bank, respectively, but however, paid interest to other parties including relatives at 15%. It was explained that the assessee has availed bank loan against FDR and thereby bank charged rate of interest at low. The rate of interest on unsecured loan is depends on availability of funds and the rate of interest depends on market

availability. Considering the same, the AO disallowed Rs.1,90,873/- by treating the same interest as compared to interest allowed at 10.75% of Rs.4,82,797/- which was availed from the bank. The CIT(A) restricted the said addition to Rs.1,34,735/- as against Rs.1,90,873/- by holding that the assessee failed to substantiate the interest paid at 15% on unsecured loans. The relevant part of the CIT(A) is reproduced here-in-below :

“4.2 Appellant's submissions have been considered carefully along with assessment order and records. As per appellant's books of accounts, interest to related persons, as specified u/s 40A(2)(b), has been paid at Rs.3,79,921/- as against total interest of Rs.6,73,670/- in respect of unsecured loans which is also not in excess of similar interest paid for unsecured loans taken from non related parties. AO has uniformly applied bank interest rate of 10.75% while making the impugned disallowance. It is to be borne in mind that the nature, purpose, availability, furnishing of guarantee, services charges involved, terms and conditions etc. vary in respect of unsecured loans vis-a-vis secured bank loans AO has further mentioned that the appellant has not been able to show the business expediency in respect of these unsecured loans particularly so when the borrowed funds have been invested by the appellant in deposits and advances not required for business purposes. This contention of the AO has not been controverted by the appellant at any stage of both proceedings i.e. assessment as well as appeal. There is no denying the fact that a businessman cannot be dictated by the revenue in conduct of his business. At the same time, it is also a settled position of law that reasonableness of expenses could be gone into for the purpose of determining taxable income of the taxpayer. The onus is on the appellant to prove both the reasonableness and nexus of these interest payments of Rs.6,73,670/- on unsecured loans with his business to prove commercial expediency thereof with the help of his financial statements. In my considered view, the appellant has failed to do so in the instant case in respect of interest paid @15% on unsecured loans which has been paid at much higher rate as compared to prevailing bank rate. After perusal of entire material on records, disallowance of interest in excess of 12%, as against 10.75% taken by the AO, is found reasonable and justified keeping in view appellant's submissions. It is further noted that same AO has applied interest rate of 12% on similar unsecured loans making disallowance of Rs. 2,04,808/- in case of appellant's family member namely Shri Bherumal Tekchand Wadhwani in order dated 11.09.2015 passed u/s 143(3) for same assessment year. Though addition of Rs. 17,700/- only has been sustained by the undersigned in the appeal order passed in case of Shri Bherumal Wadhwani on the ground that in that case the appellant has been able to substantiate and verify the availability of funds at his disposal in excess of these loans. In the instant case, the appellant has not been able to do so even in appeal proceeding. Accordingly, addition of Rs.1,34,735/-, in place of Rs.1,90,873/- made by the AO, is found sustainable and, hereby, confirmed.”

6. On perusal of the above, we note that the CIT(A) by following similar disallowance made in the case of assessee's family members where he sustained the disallowance to Rs.17,700/- as against Rs.2,04,808/-. The CIT(A) observed the assessee therein could not be able to substantiate the availability of funds at his disposal in excess of the unsecured loans. Admittedly, there was no such evidence before us in this regard, therefore, the addition of Rs.1,34,735/- is confirmed. Thus, sole ground raised by the assessee is dismissed.

7. In the result, the appeal of assessee is dismissed.

ITA No. 06/NAG/2018, A.Y. 2013-14

8. Ground No. 1 raised by the assessee against the order of CIT(A) in restricting the addition made on account of disallowance of interest.

9. We note that in related party appeal in ITA No. 05/NAG/2018 in aforementioned paragraphs, we held the order of CIT(A) is justified in restricting the addition made by the AO on account of disallowance of interest payment to third party. On perusal of the impugned order, it is noted that the AO is made addition of Rs.2,04,808/- on account of disallowance of interest payment to other parties including family members. The CIT(A) restricted to Rs.17,700/- i.e. 3% on non-business investments of Rs.5,90,000/-. Admittedly, there is no rebuttal of evidence furnished before us against the view taken by the CIT(A). The relevant part of the CIT(A) is reproduced here-in-below :

“3.2 Appellant's submissions have been considered carefully along with assessment order and records. As per appellant's books of accounts, interest to related persons, as specified u/s 40A(2)(b), has been paid at Rs.5,01,916/- as against total interest of Rs.10,24,041/- in respect of unsecured loans which is also not in excess of similar interest paid for

unsecured loans taken from non related parties. AO has uniformly applied bank interest rate of 12% while making the impugned disallowance. It is to be borne in mind that the nature, purpose, availability, furnishing of guarantee, services charges involved, terms and conditions etc. vary in respect of unsecured loans vis-a-vis secured bank loans. AO has further mentioned that the appellant has not been able to show the business expediency in respect of these unsecured loans particularly so when the borrowed funds have been invested by the appellant in deposits and advances not required for business purposes. This contention of the AO is not found correct except for investment of Rs.5,90,000/- made for advance against purchase of flat and Infrastructure Bonds, as per appellant's financial statements and as reproduced above in the submissions of the appellant. Further the case laws, as relied on by the AD, namely Goodluck Nerolac Paints Ltd. vs CIT and Laxminarayan Madanlal vs CIT are found distinguishable from the facts in the appellant's case. AO has also not brought on record comparable cases of charging lower rate of Interest on similar unsecured loans. After perusal of entire material on records and facts of the case, addition of Rs.17,700/- (3% on non business investments of RS.5,90,000/-) is found sustainable out of Rs.2,04,808/- made by the AO. Accordingly, addition of Rs.17,700/- is hereby, confirmed.”

10. In the light of the above discussion in para 9, we agree with the reasons recorded by the CIT(A) and it is justified. Thus, ground No. 1 raised by the assessee is dismissed.

11. Ground No. 2 raised by the assessee challenging the action of CIT(A) in making adhoc disallowance of 10% of total expenditure.

12. We note that the AO made addition of Rs.15,57,655/- on account of disallowance of carriage expenses. The assessee claimed the same at 1% of purchases and the AO by comparing earlier year i.e. A.Y. 2012-13 treated an amount of Rs.15,57,655/- as excessive. The CIT(A) restricted the said disallowance to Rs.3,99,160/- (at 10% of Rs.15,57,655/-). After considering the assessee's submissions made during the course of appellate proceedings which is reflected in para 5.1 of the impugned order and also the submissions of ld. AR, we note that the disallowance made by

the CIT(A) at 10% is reasonable and accordingly, it is justified. Thus, ground No. 2 raised by the assessee fails and it is dismissed.

13. In the result, the appeal of assessee is dismissed.

14. To sum up, both the appeals of assessee are dismissed.

Order pronounced in the open court on 22nd August, 2023.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 22nd August, 2023.
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Nagpur
4. The Pr. CIT-I, Nagpur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपूर,
/ DR, ITAT, Nagpur.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune