

आयकर अपीलिय अधिकरण, इंदौर न्यायपीठ, इंदौर  
IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE  
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER  
AND  
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA Nos.242 & 243/Ind/2023  
(Assessment Years : 2010-11 and 2012-13)

Shri Manjeet Singh Bhatia, 8/5, BCC House, Navratan Bagh, Indore.	vs.	JCIT/ACIT, Range 3/1(1), Indore.
(Appellant / Assessee)		(Respondent/ Revenue)
<b>PAN: AGJPB0022G</b>		
Assessee by	Shri Harsh Vijaywargiya, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	26.10.2023	
Date of Pronouncement	26.10.2023	

**ORDER**

**Per Vijay Pal Rao, JM:**

These two appeals by the assessee are directed against two separate orders of Id. CIT(A), N.F.A.C., Delhi, both dated 24<sup>th</sup> April, 2023, arising from the assessment orders passed u/s 143(3) and penalty order passed u/s 271(1)(c) of the Income-tax Act, 1961, for the assessment years 2010-11 & 2012-13 respectively.

2. In the quantum appeal for the assessment year 2010-11, the assessee has raised following grounds of appeal :

- "1. *That on the facts and in the circumstances of the case, Ld. AO and Ld. CIT(A) has erred in making ad hoc disallowance of Rs. 64,890/- and Rs. 42,550/- out of Labour charges and Collieries charges respectively without properly appreciating the facts of the case and submission made before Ld. AO and Ld. CIT(A).*
2. *That on the facts and in the circumstances of the case, Ld. AO and Ld. CIT(A) has erred in making disallowance u/s 14A of the Income-tax Act, 1961, of Rs. 30,117/- without properly appreciating the facts of the case and submission made before Ld.ao, and Ld. CIT(A).*
3. *That on the facts and in the circumstances of the case, Ld. AO and Ld. CIT(A) has erred in adding the amount of unsecured loan of Rs. 80,00,000/- to the income of the assessee u/s 68 of the Income-tax Act, 1961, without properly appreciating the facts of the case and submission made before ld. AO, and Ld. CIT(A).*
4. *That on the facts and in the circumstances of the case, Ld. AO and Ld. CIT(A) has erred in making disallowance of Rs. 16,64,344/- out of interest paid on unsecured loans which were added to the income of the assessee u/s 68 in this assessment year and also in last assessment year without appreciating the facts of the case and submission made before ld. AO and Ld. CIT(A).*
5. *That the impugned order is passed against the principles of natural justice by ignoring all the submissions made by appellant.*
6. *That the order so, passed is illegal and wrong."*

3. At the time of hearing, Ld. Authorized Representative of the assessee has submitted that the Ld. CIT(A) has dismissed the appeal of the assessee for want of prosecution without deciding grounds of appeal on merits. He has further submitted that the Ld. CIT(A) has given the reasons for ex parte order as non-filing of submissions in response to the notice issued by it, whereas the assessee has duly filed its reply in response to the notice issued by the Ld.CIT(A). The said reply was filed on-line in the e-proceedings. He has submitted a copy of acknowledgement of filing the reply by the assessee to the

notice issued by the Ld.CIT(A). Thus, the Ld. Authorized Representative of the assessee has submitted that the impugned order of the CIT(A) be set-aside and the matter may be remanded to the record of the Ld. CIT(A) for fresh adjudication on merit after giving appropriate opportunity of hearing to the assessee.

4. On the other hand, the Learned Departmental Representative has not seriously objected to the prayer of the assessee that the matter may be remanded to the record of the Ld. CIT(A) for fresh adjudication on merit.

5. Having considered the rival submissions and carefully gone through the impugned order of the Ld. CIT(A), we find that the Ld. CIT(A) has dismissed the appeal of the assessee for non prosecution in para 6 as under :-

*"6. It is clear from the discussion in para nos. 4 & 5 above that the appellant is not desirous of pursuing the grounds of appeal though more than adequate opportunities were provided. Under the circumstances, I have no other alternative but to dismiss the appeal following the ratio of the decision of the Hon'ble ITAT, Delhi Bench in the case of CIT vs. Multiplan India Limited reported in 38 ITD 320 and also the decision of the Hon'ble M.P. High Court in the case of Estate of Late Tukhoji Rao Holkar vs. CWT reported in 233 ITR 480. The law assists those that are vigilant with their rights and not those that sleep there upon. Following this principle as embodied in the well known dictum "vigilantibus non dormientibus, jura subveniunt", all the grounds raised in this appeal as reproduced in para 2 supra are dismissed."*

6. We further note that the Ld. CIT(A) has given the reasons for passing the ex parte order in para 4 that various notices were issued to the assessee after introduction of Faceless Appeals Scheme, but there was no written submission or any application for seeking adjournment on behalf of the assessee and hence in the absence of any written submission and non-compliance on the part of

the assessee to the notices, the Ld. CIT(A) proceeded to decide the appeal ex parte.

7. The assessee has filed an acknowledgement of filing reply to the notices issued by the Ld.CIT(A), which shows that the assessee has duly responded to the notice issued by the Ld.CIT(A) and filed the reply on-line. Thus, it is clear that there was some communication gap between the Ld. CIT(A) and the assessee so far as the reply filed by the assessee was not taken into consideration. Further the Ld. CIT(A) has not decided the appeal of the assessee on merit, but the same was dismissed in limine for non-prosecution. Thus, the impugned order of the Ld. CIT(A) is not in accordance with the provisions of Section 250(6) of the Income-tax Act, 1961. Accordingly, the impugned order of the Ld. CIT(A) is set-aside and the matter is remanded to the record of the Ld. CIT(A) for deciding the same afresh on merit after giving appropriate opportunity of hearing to the assessee.

8. In the appeal arising from penalty u/s 271(1)(c) of the Income-tax Act, 1961, for the assessment year 2012-13, the assessee has raised the following grounds of appeal :-

- (1) *That on the facts and in the circumstances of the case, the Id. AO and Ld. CIT(A) has erred in levying penalty u/s 271(1)(c) of the Income-tax Act, 1961, amounting to Rs. 85,357/-.*
- (2) *That on the facts and in the circumstances of the case, the Id. AO and Ld. CIT(A) has erred in passing Ex-parte order i.e. without providing reasonable opportunity of being heard to the appellant and against the principles of natural justice.*

- (3) That on the facts and in the circumstances of the case impugned orders so, passed is illegal and wrong.

9. We have heard the Ld. Authorized Representative of the assessee as well as Learned Departmental Representative and carefully perused the impugned orders of the authorities below. The AO levied the penalty u/s 271(1)(c) of the Act, in respect of the disallowance of interest paid by the assessee, which was restricted by the Ld.CIT(A) to the extent of Rs. 2,58,658/- . Hence, the AO has levied a penalty of Rs. 85,400/- u/s 271(1)(c) of the Act being 100 % of the tax sought to be evaded vide order dt. 1<sup>st</sup> March, 2018. The Ld. Authorized Representative of the assessee has pointed out that in the quantum appeal, this Tribunal has set-aside the order of the CIT(A) and remanded the issue of addition made on account of interest payment as well as disallowance u/s 14A of the Act to the record of the CIT(A) for fresh adjudication vide order dt 7<sup>th</sup> August, 2019 in I.T.A.No. 281/Ind/2017. A copy of the order of the Tribunal has been filed by the Ld. Authorized Representative of the assessee.

10. The Learned Departmental Representative has not disputed that in the quantum appeal, this Tribunal has set-aside the issue of disallowance/addition made on account of interest payment, to the record of the Ld. CIT(A).

11. Having considered the rival submissions as well as relevant records, at the out-set, we note that this Tribunal in in quantum appeal

in I.T.A.No. 281/Ind/2017 vide order dt. 07.08.2019, have considered the issue of disallowance in para nos. 5 & 6 as under :-

5. *We have heard rival contention and perused the records placed before us.*

6. *In this appeal of the assessee two grounds have been raised. Ground No. 1 relates to disallowance of interest expenditure of Rs. 2,58,658/- and Ground No. 2 relates to disallowance of expenditure of Rs. 7,025/- u/s 14A of the Act. After hearing the contentions of the Id. Counsel for the assessee we observe that Ground No.1 which relates to disallowance of interest expenditure paid on the unsecured loan have its nexus with the appeal to the assessee pending before Ld. CIT(A) for assessment year 2010-11 wherein the assessee has challenged the action of the Id. AO of making addition u/s 68 of the Act for unsecured loans of Rs. 30,00,000/- taken during the year. It is also pleaded that the alleged interest expenditure is claimed on the loan taken during assessment year 2010-11. Copy of appeal in Form No.35 filed before the Ld. CIT(A), Indore for assessment year 2010-11 is placed on record. The issue relating to addition u/s 68 of the Act at Rs. 30,00,000/- for assessment year 2010-11 is still not been decided by the Ld. CIT(A). In the given facts and circumstances of the case and since no objection has been raised by the Learned Departmental Representative, we are of the considered view that all the issues raised in the instant appeal in Ground no. 1 & Ground No. 2 may be set-aside to the file of Ld. CIT(A) for fresh adjudication so that Ld. CIT(A) could decide the issues alongwith the pending appeal relating to quantum of unsecured loan for assessment year 2010-11. Needless to mention that proper opportunity of being heard should be provided to the assessee."*

12. Thus, the addition on account of interest expenditure against which the penalty u/s 271(1)(c) was levied by the AO has been set-aside by this Tribunal to the record of the Ld. CIT(A) for fresh adjudication and consequently the penalty u/s 271(1)(c) against the said addition would not survive. Accordingly, in the facts and circumstances of the case, the

impugned order of the Ld. CIT(A) is set-aside and the matter is remanded to the record of the Ld. CIT(A) for fresh adjudication of the appeal against the penalty u/s 271(1)(c) of the Act, after the outcome of the set-aside quantum appeal as well as giving an appropriate opportunity of hearing to the assessee.

13. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order is pronounced in Open Court on conclusion of the hearing on 26.10.2023.

**Sd/-**  
**(B.M. BIYANI)**  
Accountant Member

**sd/-**  
**(VIJAY PAL RAO)**  
Judicial Member

**Indore, Dated : 26.10.2023**

***CPU/Sr. PS***

*Copies to:* (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Sr. Private Secretary*  
*Income Tax Appellate Tribunal*  
*Indore Bench, Indore*