

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.3284/Mum/2023
(Assessment Year :2016-17)**

Shri Amit Nagesh Shinde B-604, Anand CHS New Mill Road Eagle Wadi Kurla West Mumbai Maharashtra - 400 070	Vs.	Income Tax Ward- 26(1)(1) Mumbai
PAN/GIR No. AURPS6458D		
(Appellant)	..	(Respondent)

Assessee by	Shri Shashank Mehta
Revenue by	Ms. Anam Benish
Date of Hearing	11/03/2024
Date of Pronouncement	12/03/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 20/07/2023, passed by NFAC, Delhi for the quantum of assessment passed u/s. 143(3) for the A.Y.2016-17.

2. The grounds raised before us, reads as under:-

“1. In the facts and circumstances of the case and in law, the Ld Commissioner of Income Tax (Appeals) has erred in upholding the action of the Ld. Assessing Officer in making addition of Rs. 10,62,534/- under section 69A in respect of the unsecured loans disregarding the legal/factual matrix of the case.

2. In the facts and circumstances of the case and in law, the Ld Commissioner of Income Tax (Appeals) has erred in upholding the action of the Ld. Assessing Officer in making addition of Rs. 4,62,944/- under section 69C in respect o the interest expenses claimed by the Appellant as business expenditure disregarding the legal/factual matrix of the case.”

3. The brief facts are that assessee is an individual having business from income from profession as a proprietor of M/s. Om Shree Balaji Petroleum. The ld. AO on perusal of the audit report noted that assessee has taken unsecured loan from Mr. Jignesh Soni of Rs.7,00,000/- and Mr. Sanjay Sharma of Rs.3,62,534/- and assessee did not furnish loan confirmation, copy of letter and bank statement of the lenders. Hence, credit worthiness and genuineness of the transaction cannot be proved. Accordingly, amount of Rs.10,62,534/- was added u/s.69A as unexplained money.

4. Further, on perusal of the profit and loss account, he noted that assessee has claimed financial expenses of Rs.4,62,944/- and at the same time assessee’s capital balance is negative of Rs.3,93,23,470/-. In response to show-cause notice, assessee has stated as under:-

“We enclose herewith the Balance Sheet of FY 12-13 and FY 13-14 which clearly states the loan from various parties to whom

interest is paid in FY 15-16 and claimed as expenditure. From the said balance sheet, it can be clearly seen that capital was positive in those year. The business went to losses after these loans were taken. In view of above, it is clear that such loans were utilized for the purpose of the business and losses were incurred after that (because of which capital became negative) and hence, disallowance of interest is not justified."

5. However, ld. AO rejected assessee's contention for the following reasons:-

- i. Balance Sheet for AY 2013-14 and AY 2014-15 has not been submitted.
- ii. The assessee has not submitted any evidence to prove that how the capital went in negative after the receipt of loans and how business went to losses after the receipt of loans.
- iii. On perusal of Balance Sheet, for A.Y.2015-16, it is observed that there was a negative Capital balance of Rs.4,63,11,659/-
- iv. Assessee has diverted interest bearing fund by making huge withdrawal of capital.

6. Accordingly, he disallowed the claim of financial expenses of Rs.4,62,944/-.

7. Before the ld. CIT (A) the assessee has submitted as under:-

"2. As regards disallowance of Rs 10,62.534/- unsecured loan received from Mr. Jignesh Soni Rs 7,00,000/- and Mr. Sanjay Sharma Rs 3,62,534/- we wish to state your appellant has been asked to prove the credit worthiness and genuineness of the transaction to which the appellant respectfully submits that the AO has failed to cross verify the transaction with the unsecured

*loan parties in spite of requesting AO to send summons u/s 131 of the Income Tax Act 1961 as well as for asking the information u/s 133(6) of the Income Tax Act, 1961 Also, all the details namely, name, address and PAN of unsecured loans were duly submitted during the assessment proceedings vide letter dated 20.12.2018 On the other hand, we were continuously following up with all the unsecured loan parties during assessment proceedings for the loan confirmation, return copy and Bank Statement, but due to time barring nature of the assessment proceedings, these documents could not be submitted during assessment proceedings **Further, we wish to state that Rs. 7,00,000/- was received from Mrs. Shantaben Soni instead of Mr. Jignesh Soni and Rs. 3,62,534/- was received from Mr. Ashoknath Sharma instead of Mr. Sanjay Sharma as Unsecured Loans. We hereby enclose herewith the loan confirmation and Bank Statement of the said parties which will prove the credit worthiness and genuineness of the transaction for your reference and records.***

8. Assessee had also filed petition for admission of additional evidence under rule 46A (1) to substitute the claim of the loan and its genuineness. Regarding interest, it was submitted that same was interest on bank OD, secured loans and unsecured loans and he further submitted that assessee incurred loss in business for a period of time and accordingly, capital had become negative. Loans were taken to repay the earlier loans and these loans were utilized wholly for the purpose of business and the reason given by AO for disallowing the interest cannot be upheld.

9. We find that, the NFAC without even considering the written submissions which was filed and uploaded on portal before the

ld. CIT (A) on 23/11/2021 for which acknowledgement has also been given and filed before us, the first appellate authority has dismissed the assessee's appeal holding that "**assessee has not submitted any evidence or documents in this regard, hence, this ground of appeal fails.**" Such an insouciant remark without looking to materials and explanation placed before him or giving any reason as to why additional evidence and the documents furnished by the assessee are not admissible is wholly unwarranted from a First Appellate Authority. Similarly, on interest issue he has simply stated that, **assessee has not submitted any evidence / documents in this regard. Hence, this ground of appeal fails.** Such a summary dismissal of appeal without even acknowledging the written submissions and documents filed is wholly unjustified and arbitrary way of dispensing the justice.

10. Before us ld. Counsel drew our attention to the documents which were furnished before the ld. AO and ld. CIT(A) in the form of additional evidence and pointed out that assessee has taken loan from Mrs. Shantaben Soni of Rs.7,00,000/- and Mr. Ashoknath Sharma of Rs. 3,62,534/-. The ld. AO has wrongly noted even the names of the lenders. He also drew our attention to the copy of confirmation of amount of Mr. Ashoknath Sharma and pointed out that there was opening balance of Rs.2,11,000/- and during the year assessee has received loan of Rs.3,62,534/- for which confirmation of account from the party was filed. Not only that, assessee has also filed the bank statement of the

lender wherein the amount has been paid through transfer entry by RTGS. Similarly, with regard to loan taken from Mrs. Shantaben Soni, assessee had filed loan confirmation account alongwith bank statement of the said party. He submitted that both these lenders had huge credit balance in their bank account and these are independent parties who have confirmed the loan transaction and also given their bank statements.

11. With respect to interest, he has filed additional evidences in its petition under Rule 29 of ITAT Rules, giving the ledger account of interest paid for overdraft account, bank statements, details of interest paid of secured loans and unsecured loans alongwith ledger of interest paid to various lenders both for secured and unsecured loans. Thus, he submitted all this was part of the books of accounts and audit report placed on the record before the ld. AO. Thus, interest could not have been disallowed as the same has been paid to the bank institution and to the lenders for the loans taken in the earlier years for which there is no dispute.

12. On the other hand ld. DR strongly relied upon the order of the ld. AO and submitted that onus was upon the assessee to substantiate the loan and the payment of the interest which assessee has failed to do so before the ld. AO. In any case since the ld. CIT (A) has not considered the explanation and the evidence and assessee has also filed additional evidence before this Tribunal, therefore, matter should be restored back to the file of the ld. AO to examine the same afresh.

13. After considering the aforesaid submissions and the material placed on record, we find that in so far as the loan taken from both the lenders, it is seen that before the ld. AO assessee has requested to issue summon u/s.131 and asked for information u/s. 133(6) from the lenders and also provided name, address and PAN of the persons. Before the ld. CIT (A) assessee had filed copy of loan confirmation, bank statements of the said parties to prove the creditworthiness and genuineness of the transaction. However, the ld. CIT (A) as noted above did not even acknowledge the written submissions as well as the documents. From the perusal of the bank statements, it is seen that both the parties had sufficient credit balance in their bank account before transferring the amount through RTGS to the assessee's account and they have also acknowledged in the confirmation about giving of the loan to the assessee. Once these documents are there on record, it cannot be held that the loan is not genuine or parties did not have the creditworthiness. Accordingly, addition on account of loan of sum aggregating to Rs.10,62,534/- is deleted.

14. In so far as disallowance of interest expenditure is concerned, the assessee before us has filed copy of ledger account and bank statement of the assessee and it is seen that these interests are duly reflected in the audited accounts as well as in the bank statements. From the perusal of the balance sheet

it is seen that assessee had disclosed financial expenses in the following manner:-

Financial Expenses

Interest on Bank O.D	1,72,641.00
Interest on Unsecured Loans	2,26,744.00
Interest on Secured Loans	63,559.00
	4,62,944.00

In so far as interest on bank OD is concerned, assessee had filed copy of ledger account of SBI and the interest was paid to the bank on OD account. Similarly, for secured and unsecured loans assessee has filed copy of bank statement and ledger account of interest paid to various parties on the loans taken. Thus, there is a genuine outgoing of interest to the banks as well as to the parties, either for OD account or the loans taken in the earlier years. Nowhere it has been brought on record or it is the case of the AO that that loans taken earlier or during the year is not for business purpose. The reason for disallowance by the ld. AO is that since assessee has not submitted how the capital went negative after the receipt of loans and how the business went into losses after receipt of loans. This cannot be the reason for disallowance of interest without doubting genuineness of the payments itself. If there are loans outstanding in the balance sheet and assessee has paid interest to these parties from his bank account, there is no reason for making any such disallowance, unless the loans in the balance sheet have been

found to used for non-business purpose. Accordingly, the disallowance of interest of Rs.4,62,944/- is deleted.

15. In the result, appeal of the assessee is allowed.

Order pronounced on 12th March, 2024.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Mumbai; Dated 12/03/2024
KARUNA, *sr.ps*

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai