

।आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "A" :: PUNE

BEFORE SHRI PARTHA SARATHI CHAUDHURY,
JUDICIAL MEMBER AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1240/PUN/2023
निर्धारण वर्ष / Assessment Year : 2014-15

Ms. Aum Housing, Row House No.2, Lane No.6, Sugra Terrace, Kalyaninagar, Pune – 411001. PAN: AAKFA4028N	V s	The Income Tax Officer, Ward-7(3), Pune.
Appellant / Revenue		Respondent / Assessee

Assessee by	Shri Bhuvanesh Kankani – AR
Revenue by	Shri R.Y.Balawade – Addl.CIT
Date of hearing	12/03/2024
Date of pronouncement	26/03/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

The assessee filed appeal against order under section 250 of the Income Tax Act, 1961 passed by Id.Commissioner of Income Tax(Appeal)[NFAC] dated 30.09.2023 for A.Y.2014-15. The grounds of appeal raised by the assessee are as under:

“1. On facts and circumstances prevailing in the case and as per provisions & scheme of the Act it be held that the disallowance of interest amounting to Rs.77,12,948/- u/s 36(l)(iii) is unjustified, unwarranted and against the provisions of the Income Tax Act,

1961. The addition be kindly deleted and the appellant be granted just and proper relief in this regard.

2. On facts and circumstances prevailing in the case and as per provisions & scheme of the Act it be held that the Ld. AO and Ld. CIT(A) has erred in disallowing and upholding the disallowance of the interest expenditure incurred by the appellant u/s 36(l)(iii) in spite of the fact that the appellant firm possessed sufficient non-interest-bearing funds to suffice the impugned withdrawals. Thus, The addition made in this regard be kindly deleted and the appellant be granted just and proper relief in this regard.

3. Without prejudice to the above, on facts and circumstances prevailing in the case and as per provisions & scheme of the Act if at all it is held that the capital withdrawals made by the partner in the appellant firm are out of interest-bearing funds, it be held that no disallowance u/s 36(l)(iii) is to be made in light of the principle of commercial expediency. The addition made in this regard be deleted and the appellant be granted just and proper relief in this regard.

4. Without prejudice to above grounds, on facts and circumstances prevailing in the case and as per provisions and scheme of the Act it be held that the Ld. CIT(A) erred in rejecting the new claim of Interest payable to partners so made by Appellant for the first time before Ld. CIT(A). Accordingly, it be kindly held that the new claim made by Appellant before Ld. CIT(A) is valid in Law and accordingly appellant be granted just and proper relief in this respect.

5. Without prejudice to above grounds, on facts and circumstances prevailing in the case and as per provisions and scheme of the Act it be held that the Ld. CIT(A) has not adhered to the Principle of Natural Justice since the request of personal hearing through Virtual Conference was not entertained. Accordingly, the Appellate Proceedings so completed before Ld. CIT(A) be kindly annulled and appellant be granted just and proper relief in this respect.

6. Without prejudice to the above, on the facts and circumstances prevailing in the case and as per provisions & scheme of the Act it be held that if at all the disallowance of interest u/s 36(l)(iii) is to be made, the disallowance should be made only out of Rs.31,28,539/-

which is the interest actually claimed as a deduction, i.e., no disallowance should be made in respect of the interest which has been capitalized into the Work-In-Progress. The same be deleted and the appellant be granted just and proper relief in this regard.

7. The appellant prays to be allowed to add, amend, modify, rectify, delete, raise any grounds of appeal at the time of hearing.”

2. We have heard both the parties and perused the records. The Id.Authorised Representative of the assessee i.e. Adv. Bhuvnesh Kankani vehemently submitted that assessee had sought virtual hearing through video conference before Id.CIT(A) vide letter dated 10.09.2023, which was in response to notice dated 06.09.2023 issued by Id.CIT(A). The assessee has filed copy of the screenshot of Income Tax Department's Website to demonstrate the video conferencing request made by assessee. The said screenshot is at the page no.78 of the paper book. The Id.DR has perused the said screenshot and accepted that request was made by assessee. However, it is observed that Id.CIT(A) in para 5 has mentioned that no response for personal hearing has been received from the appellant. The Id.CIT(A) has categorically recorded incorrect fact in the order dated 30.09.2023. Therefore, we agree with the assessee that assessee was denied principal of natural justice. In this context, we would like to refer to the Hon'ble Madras High Court's decision in the case of

C.Chellamuthu Vs. Principal Commissioner[NFAC] [2024] 158 taxmann.com 132 wherein the Hon'ble Madras High Court held that providing opportunity through video conferencing once asked by assessee is mandatory. The relevant portion of the Hon'ble Madras High Court observations are reproduced as under :

“In the said Email communication is clearly mentioned that since it is high pitch assessment the petitioner has sought video conference hearing. Therefore this Court is of the considered opinion that it is clearly violation of principles of natural justice.”

3. In these facts and circumstances of the case, as assessee was denied opportunity of hearing, we set-aside the order of Id.CIT(A) for denovo adjudication. The Id.CIT(A) shall provide opportunity of hearing to the assessee.

4. Accordingly, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 26th March, 2024.

Sd/- (PARTHA SARATHI CHAUDHURY) JUDICIAL MEMBER	Sd/- (DR. DIPAK P. RIPOTE) ACCOUNTANT MEMBER
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पुणे / Pune; दिनांक / Dated : 26th March, 2024/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.