

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE
SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 7454/Del/2018
Asstt. Year: 2014-15

Sanjeev Mittal, C/o M/s. RRA Taxindia, D-28, South Extension, Part-1, New Delhi 110 049 PAN AFLPK2161E	Vs.	DCIT, Circle-II, Faridabad.
(Appellant)		(Respondent)

ITA No. 7339/Del/2018
Asstt. Year 2014-15

ACIT, Circle-II, Faridabad.	Vs.	Sanjeev Mittal, H.No. 632, Sector-15, Faridabad Haryana PAN AFLPK2161E
(Appellant)		(Respondent)

Assessee by:	Dr. Rakesh Gupta, Adv. Shri Deepesh Garg, Adv.
Department by:	Shri Anuj Garg, Sr. DR
Date of Hearing:	01.04.2024
Date of pronouncement:	03.05.2024

ORDER

PER ASTHA CHANDRA, JM

These cross appeals filed by the Revenue and the assessee are directed against the order dated 11.09.2018 of the Ld. Commissioner of Income Tax (Appeals), Faridabad ("**CIT(A)**") pertaining to the Assessment Year ("**AY**")

2014-15. These were heard together and are being disposed of by this common order.

2. The Revenue has raised the following grounds:-

- “(i) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right in law in admitting the additional evidences under clause (c) & (d) of Rule 46A(1) whereas neither of the clause is applicable ?*
- (ii) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right in law in deleting the addition of Rs. 1,47,00,000/- which has been elaborately discussed by the AO and even scanned copy of cash book was also made part of the assessment order. The AO has afforded the assessee full opportunity to explain the same. Whereas the assessee could not file any documentary evidence whatsoever at the time of assessment proceedings ?*
- (iii) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right on facts and in law in deleting the addition of Rs. 90,00,000/- in their circumstances where the assessee has remained totally failed to file any evidence before the AO?*
- (iv) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right on facts and in law in deleting the addition of Rs. 24,000/- observing calculation mistake where as there is none?”*

3. The grounds taken by the assessee are as under:-

- “1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in sustaining the action of Ld. AO in making addition of Rs.15,04,008/- on account of notional interest u/s 36(1)(iii) of Income Tax Act, 1961 and that too without appreciating the facts and circumstance of the case and without observing the principles of natural justice.*
- 2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs.1,10,000/- on account of commission expenses and that too without appreciating the facts*

and circumstance of the case and without observing the principles of natural justice.”

4. Briefly stated, the facts are that the assessee individual is engaged in the business of trading in Real Estate. For AY 2014-15, he e-filed his return on 23.09.2014 declaring income of Rs. 37,57,280/-. His case was selected for limited scrutiny under CASS. Statutory notices were issued/served along with queries which were complied with. During assessment proceedings the Ld. Assessing Officer (**“AO”**) found from the cash book (page 11 of Paper Book) that the assessee had received during the year Rs. 40,00,000/- on 01.08.2013 and Rs. 1,07,00,000/- on 12.11.2013 as advance against house at Sector-10. The assessee furnished a copy of purchase deed of the property H. No. 70, Plot No. 1-P, Street-D, Sector 10A Chandigarh executed on 31.03.2010. Since sale deed of the said property was not submitted, the Ld. AO treated the receipts totalling Rs. 1,47,00,000/- as unexplained under section 68 of the Income Tax Act, 1961 (**the “Act”**) and added the same to the income of the assessee. The Ld. AO further found on perusal of Trading and P&L account that the Trading account is debited by a sum of Rs. 90,00,000/- as purchases. Treating the said purchases having been made in cash in violation of provisions of section 40A(3) of the Act, the Ld. AO added Rs. 90,00,000/- to the income of the assessee. The Ld. AO also found from perusal of the books of account that the assessee had given interest free advances amounting in all to Rs. 1,27,33,400/- to six parties (Anil Nibber Rs. 10,00,000/-. Advance to plot in Kaithal Rs. 15,00,000/-; Ishan & Co. Rs. 24,45,000/-; Karan Bali Rs. 10,00,000/-; Manish Nijavan Rs. 10,00,000/- and NKM Rs. 57,88,400/-). The assessee had also incurred interest expenses amounting to Rs. 26,05,055/- (on Home Loan Rs. 17,30,112/- and on Godown Rs. 8,74,943/-). The Ld. AO disallowed interest of Rs. 15,28,008/- out of loans and advances of Rs. 1,27,33,400/- @ 12% under section 36(1)(iii) of the Act which he added to the income of the assessee. The Ld. AO also disallowed claim of commission expenses of Rs. 1,10,000/- in absence of corroborative documentary evidence. Accordingly

the Ld. AO completed the assessment on total income of Rs. 2,90,95,290/- on 26.12.2016 under section 143(3) of the Act.

5. Aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A). During appeal proceedings the assessee requested for admittance of additional evidence under Rule 46A of the Income Tax Rules, 1962 (**the “Rules”**). It was submitted that clause (c) and (d) of the Rule 46A(1) is attracted in the case of the assessee. The Ld. CIT(A) considered the facts and relying on the decision of Hon’ble Bombay High Court in Prabhavati S. Shah v. CIT (1998) 231 ITR 1 (Bom) and decisions of Hon’ble P & H High Court in Arjun Dass vs. CIT (1975) 112 ITR 480 (P&H) and in CIT vs. Jind Co-operative Sugar Mills (2011) 335 ITR 43 (P&H) admitted the additional evidence submitted by the assessee before him.

6. The Ld. CIT(A) obtained remand report dated 17.08.2018 from the Ld. AO on the documentary evidences filed by the assessee. This is reproduced in para 10 of the appellate order. The Ld. CIT(A) called for rejoinder from the assessee on the remand report which the assessee submitted vide letter dated 06.09.2018 (reproduced in para 11 of the CIT(A)’s order).

7. Before the Ld. CIT(A) the assessee filed written submission in respect of the additions/disallowances made by the Ld. AO on which the Ld. CIT(A) obtained the comments/report of the Ld. AO. These form part of the appellate order.

8. On the issue of addition of Rs. 1.47 crores under section 68 of the Act, the Ld. CIT(A) recorded his finding in para 16 as under:-

“16. I have carefully considered the facts of the case and gone through the submissions filed by the counsel of the appellant during appellate proceedings together with Remand Report of the AO and rejoinder filed by the appellant. As evident from the remand report of the AO as reproduced above it is evident that the source of Rs.1.47 Crores received by the appellant stands explained

in view of the fact that the sale deed for the piece of land for which the advance had been received by the appellant (during the Asstt. Year under consideration) has been executed. The fact that this advance was made by M/s S.R. Forging Pvt. Ltd. to the appellant is borne from the narration of the sale deed and the execution of the sale deed between the appellant and M/s S.R. Forging puts beyond doubt any suspicion about the genuineness of the advances received by the appellant. The sale deed has been executed on 16.01.2018 and thus the capital gain on the same shall be assessable in Asstt. Year 2019-20. Thus keeping in view the entire facts of the case and the remand report of the AO I find no reasons to sustain this addition. Hence the addition is deleted.”

9. The Ld. CIT(A) also deleted the addition of Rs. 90 lacs under section 40A(3) of the Act by observing and recording the following findings in para 21 of his order:-

“21. I have carefully considered the facts of the case and gone through the submissions filed by the counsel of the appellant during appellate proceedings together with Remand Report of the AO and rejoinder filed by the appellant. As evident from the remand report of the AO and other evidences furnished by the appellant before me it is clear that no purchases amounting to Rs.90 Lacs were made by the appellant during the year. The necessary evidence along with the bank certificates has been examined by the AO and no infirmity in the same has been found. As far as the issue of the appellant's investment to the tune of Rs.90 Lacs as compared to the sale deed for Rs.1.75 Crores is concerned, I have examined the sale deed in question dated 10.05.2011 (annexed at page No. 50 and 51 of the paper book). From the same it is evident that the appellant's share in this property is only to the extent of 50%, with the other 50% belonging to one Sh. Anil Nanda. Thus the appellant's share being 50%, the liability for making the payment is also to the extent of 50%, which explains by Rs.90 Lacs has been paid by the appellant for a property which is jointly bought for Rs.1.75 Crore. Thus considering the entire evidences and the remand report of the AO I find no reasons to sustain this addition. Consequently, the addition is deleted.”

10. As regards the disallowance of interest of Rs. 15,28,008/- under section 36(1)(iii) of the Act, the Ld. CIT(A) confirmed the disallowance to the extent of Rs. 15,04,008/- allowing relief of Rs. 24,000/- being mistake in calculation. He recorded his finding in para 26 of the order as under:-

“26. I have carefully considered the facts of the case and gone through the submissions filed by the counsel of the appellant during appellate proceedings together with Remand Report of the AO and rejoinder filed by the appellant. I find that there are certain calculation mistakes which have been explained by the Ld. AR in the written submissions as reproduced in the earlier part of this order. Keeping in view these mistakes the addition made by the AO to the tune of Rs. 15,28,008/- is reduced by Rs. 24,000/- and the balance addition of Rs. 15,04,008/- is confirmed.”

11. The Ld. CIT(A) also confirmed the disallowance of commission expenses of Rs. 1,10,000/- claimed by the assessee by recording his findings in para 31 of his order as under:-

“31. I have carefully considered the facts of the case and gone through the submissions filed by the counsel of the appellant during appellate proceedings together with Remand Report of the AO and rejoinder filed by the appellant. I find that since the appellant has been unable to provide the evidence that these payments were routed through his bank account or from his cash book, I am not convinced that these payments were made by the appellant through his accounted money. In view of these facts this addition made by the AO is confirmed.”

12. Dissatisfied, the Revenue is in appeal before the Tribunal challenging admission of additional evidence by the Ld. CIT(A); deletion of addition of Rs.1.47 crore under section 68 of the Act; deletion of addition of Rs. 90 lacs under section 40A(3) and deletion of disallowance of Rs. 24,000/- observing it to be calculation mistake. All the ground Nos. (i) to (iv) relate respectively thereto.

13. The assessee is aggrieved by sustenance of disallowance of interest to the extent of Rs. 15,04,008/- under section 36(1)(iii) of the Act and confirmation of disallowance of commission expenses of Rs. 1,10,000/-. Ground No. 1 and 2 relate respectively thereto.

14. We take up appeal of the Revenue first.

15. Apropos Ground No. (i): According to the Revenue, neither clause (c) nor clause (d) of Rule 46A(1) is applicable to the assessee. Therefore, the Revenue posed the question whether the Ld. CIT(A) is right in law in admitting the additional evidence under clause (c) & (d) of Rule 46A(1) of the Rules. In our opinion, the reply is in affirmative. This is because the issue is squarely covered by the decision of Hon'ble Delhi High Court in CIT vs. Virgin Securities and Credits (P) Ltd. (2011) 332 ITR 396 (Delhi) wherein the Court held as under :-

“Held that it was a matter of record that before admitting the additional evidence, the Commissioner (Appeals) obtained a remand report from the Assessing Officer. While submitting his report, the Assessing Officer had had not objected to the admission of the additional evidence, but had merely reiterated the contentions in the assessment orders. It was only after considering the remand report, the Commissioner (Appeals) had admitted the additional evidence. It could not be disputed that this additional evidence was crucial to the disposal of the appeal and had a direct bearing on the quantum of claim made by the assessee. The plea of the assessee which taken before the Assessing Officer remained the same. The Assessing Officer had taken adverse note because of non-production of certain documents to support the plea and it was in these circumstances, the additional evidence was submitted before the Commissioner (Appeals). It could not be said nor was it the case of the revenue that additional evidence was not permissible at all before the first appellate authority. On the contrary, rule 46A of the Income-tax Rules permits the Commissioner (Appeals) to admit additional evidence if he finds that the same is crucial for disposal of the appeal. In the facts of the instant case, therefore, no substantial question of law arose.”

15.1 Following the decision (supra) we reject this ground and hold that the Ld. CIT(A) was perfectly justified in admitting the additional evidence produced by the assessee before him.

16. Apropos Ground No (ii): The Ld. AO made the impugned addition of receipts of Rs. 1.47 crore as per cash book maintained by the assessee only because the copy of sale deed of the property sold by the assessee to authenticate the said receipts shown in assessee's cash book was not submitted, though copy of purchase deed of the same property was

furnished before him. Before the Ld. CIT(A) the assessee not only produced sale deed dated 16.01.2018 but also sale agreement dated 01.08.2013 between assessee and M/s. S.R. Forging Ltd. showing advance given to the assessee and confirmation of M/s. S.R. Forging Ltd. whom the assessee sold the property. These form part of the additional evidence admitted by the Ld. CIT(A). It is quite evident that the source of receipt of the impugned sum of Rs. 1.47 crore has been explained. Therefore the Ld. CIT(A) was convinced about the genuineness of the advances of Rs. 1.47 crore received by the assessee. We find no reason to interfere with the findings of the Ld. CIT(A). Only because documentary evidence was not filed at the time of assessment which were filed by way of additional evidence before the Ld. CIT(A) which he admitted after giving full opportunity to the Ld. AO to rebut/offer comments in remand proceeding. In our humble opinion, the impugned addition cannot be sustained. This ground is decided against the Revenue.

17. Apropos Ground No. (iii): The Ld. AO made the impugned addition of Rs. 90 lacs under section 40A(3) of the Act for the reason that the said sum was found debited to the trading account as purchases which according to Ld. AO could not be substantiated by the assessee. However, it was found by the Ld. CIT(A) on the basis of evidence validly admitted by him by following the due process of law and recording his finding that during the year the assessee had not, in fact, made any purchases. It was ascertained from the sale deed dated 10.05.2011 of the property that the assessee had bought the property, 50% of which was his share. This accounted for payment of Rs. 90 lacs towards purchase of the property. The finding of the Ld. CIT(A) in this regard could not be assailed by the Revenue by bringing on record any adverse material. We, therefore, concur with the view of the Ld. CIT(A) and reject this ground of the Revenue too.

18. Apropos Ground No. (iv): The impugned addition of Rs. 24,000/- which has been deleted by the Ld. CIT(A) is on account of calculation mistake. The

Ld. DR could not explain as to how there was no calculation mistake. In this view of the matter, this ground is without any basis and is rejected.

19. In the result, the appeal of the Revenue is dismissed.

20. We now take up the appeal of the assessee.

21. Apropos Ground No. 1: The Ld. AO made the impugned disallowance of interest of Rs. 15,28,008/- (the correct amount as per Ld. CIT(A) is Rs. 15,04,008/-) under section 36(1)(iii) of the Act as he found that the assessee had paid interest of Rs. 26,05,055/- on borrowed funds and claimed deduction thereof whereas he had advanced interest free loans to six parties amounting in all to Rs. 1,27,33,400/- (the correct amount is Rs. 1,25,33,400/-). On appeal by the assessee, the Ld. CIT(A) sustained the said disallowance after giving relief of Rs. 24,000/-. Before us the Ld. AR relied on the written submissions made before the Ld. CIT(A) reproduced by him in para 23 of his appellate order. Without prejudice, the Ld. AR drew our attention to the reply dated 20.12.2016 (copy at pages 39 of Paper Book) filed before the Ld. AO stating therein that out of total loans and advances Rs. 25 lakhs were given for purchase of property. He further submitted that Rs. 10 lacs to Anil Nibber was given on 10.01.2014; Rs. 24,45,000/- to Ishan & Co. was given on 21.03.2014 and Rs. 57,88,400/- was given to NKM Buildtech in two instalments of Rs. 31,15,925/- on 07.01.2014 and Rs. 26,72,475/- on 10.01.2014. However, the Ld. AO applied interest rate for the whole year. He contended that the impugned disallowance under section 36(1)(iii) of the Act is not at all justified.

22. The Ld. DR submitted that there was no business exigency for the assessee to obtain funds and pay interest thereon.

23. We have given careful thought to the rival submission and perused the records. It is not in dispute that the assessee is engaged in the business of

trading in Real Estate. Undoubtedly, the assessee can borrow capital for the purposes of his business and pay interest thereon. Section 36(1)(iii) of the Act provides that the interest paid in respect of capital borrowed for the purposes of business is an allowable deduction in computing the income from business. There is no finding either of the Ld. AO or of the Ld. CIT(A) that interest of Rs. 26,05,055/- has been paid for purposes other than business. The contention of the assessee has been that the interest bearing capital borrowed has been used for the purposes of assessee's business. This contention of the assessee has not been controverted. The assessee is the best judge of his business needs. Revenue cannot allege that there was no business exigency to borrow interest bearing funds for the purposes of business of the assessee. No direct linkage has been established by the Revenue that interest bearing borrowed funds have been diverted for advancing interest free loans. There is no such allegation at all. The impugned disallowance, in our view, does not rest on any solid legal foundation. In this view of the matter, the alternate plea raised by the assessee that rate of interest has been applied for the whole year and not only for the period of advances given becomes infructuous. We therefore decide the main ground No. 1 in favour of the assessee and direct the Ld. AO to delete the impugned disallowance.

24. Apropos Ground No. 2: The Ld. AO disallowed commission expenses of Rs. 1,10,000/- for want of documentary evidence. The disallowance has been maintained by the Ld. CIT(A) with the observation that he was not convinced that the payments were made through accounted money of the assessee. Before us, the Ld. AR reiterated the submission made before the Ld. CIT(A). The Ld. DR relied upon the finding of the Ld. CIT(A).

25. We have considered the submission of the parties and perused the written submission of the assessee before the Ld. CIT(A). The assessee had contended that it was the business exigency to pay commission in the line of

the trade of the assessee of Real Estate purchase and sale. On turnover of Rs. 1,13,65,000/- commission payment of Rs. 1,10,000/- was reasonable. The assessee brought on record before the Ld. CIT(A) party-wise details of commission paid by him along with PAN and addresses of the recipients of the impugned commission. Evidence produced before Ld. CIT(A) were examined in remand proceedings by the Ld. AO and no fault was found by him. The sustenance of the claim of impugned commission expenses by the Ld. CIT(A) is based on conjecture and surmises alone and not on facts. We, therefore, hold that the impugned disallowance is not warranted. We, therefore direct the Ld. AO to delete the same.

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

27. In nutshell, the appeal of the Revenue is dismissed and the appeal of the assessee is allowed.

Order pronounced in the open court on 3rd May, 2024.

**Sd/-
(G.S. PANNU)
VICE PRESIDENT**

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 03/05/2024

Veena

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi