

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER,**

**ITA No.3213/Mum/2023
(A.Y. 2012-13)**

Shri Sumermal Bhimraj Mehta, 3 rd Floor, Ardeshir Dady X Lane, C.P. Tank, Sabu Bhuvan, Mumbai - 400004	Vs.	ITO, 19(3)(4) Matru Mandir, Tardeo Road, Maharashtra - 400007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAHPM2416K		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Krishna Kumar

Date of Hearing	09.05.2024
Date of Pronouncement	17.05.2024

आदेश / ORDER

Per Amarjit Singh (AM):

This appeal filed by the assessee is directed against the order passed by the Id. CIT(A) NFAC for A.Y. 2012-13. The assessee has raised the following grounds before us:

- “1. Ld CIT-A has erred in sustaining addition made by Assessing officer by not deleting the addition made by assessing officer for legitimate claim of interest expenses amounting Rs. 6,38,873/ paid to M/s GSB Securities Private Limited on unsecured loan against interest received from partnership firm without considering the fact that entire borrowed funds were utilised for the purpose of the partnership firm of the assessee and also The assessee had received the interest from partnership firm @ 12% pa on partners' capital whereas interest paid

was @9% per annum only Hence there is clear direct nexus that these borrowed funds are invested in partnership firm and these interest expenditure were wholly and exclusively incurred for the purpose of business of the assessee hence allowable under section 36(1) of the act.

2. *CIT-A had erred in law and in facts of the case in not allowing the assessee a proper and adequate opportunity of being heard and filing submissions CIT-A had disposed off assessee's appeal ex-parte rather than deciding the same based on merits and facts of the case. Thus CIT-A had violated the principals of natural justice. Hence it is prayed that the case of assessee be heard by ITAT Mumbai or case be transferred to CIT A for proper hearing and decision based on merit and facts of the case.*
3. *The appellant craves to add, delete, alter, modify and withdraw any of the ground during pendency of the appeal.”*

2. Fact in brief is that return of income declaring total income of Rs.7,69,160/- was filed on 12.03.2013. The assessee was a partner in the firm named M/s P.B. Metal Corporation and received interest of Rs.6,86,515/- from the partner firm and also received interest of Rs.1,40,119/- from the fixed deposit maintained in the bank. Against these interest receipt the assessee has claimed interest expenses of Rs.6,38,878/- on the unsecured loan obtained from GSB Securities Pvt. Ltd. On query the assessee explained that amount borrowed from GSB Securities Pvt. Ltd. was invested in the partnership from which he had earned interest income of Rs.6,86,515/-. The assessee submitted that there was a direct nexus of the borrowed funds with the investment made by the assessee in the partnership, however, the AO had not allowed claim of the assessee stating that direct nexus between the interest on borrowed funds and interest received from partnership firm had not been established.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee holding that in spite of giving sufficient opportunity the assessee has not made any compliance.

4. Heard the ld. D.R and perused the material on record. The assessee is a partner in PB Metal Corporation a partnership firm and received interest of Rs.6,86,515/- on the amount invested in the capital of the said firm. The assessee has claimed interest expenses on unsecured loan obtained from GSB Capital Pvt. Ltd. which was invested in the capital of the said partnership firm. The assessing officer has disallowed the claim of interest expenses stating that interest expenses of Rs.6,38,873/- was not directly attributable to earning of interest income from the partnership firm. Before the assessing officer the assessee has submitted the various documents in support of his claim that entire amount borrowed from GSB Securities Pvt. Ltd. was invested in the partnership firm and interest received from PB Metal Corporation on the investment was directly attributable to the investment made out of the loan obtained from the GSB Securities Pvt. Ltd. Before the ld. CIT(A) in the Form No. 35 filed by the assessee he has explained that during the course of assessment proceedings all the detail of the loan taken and interest received and paid was submitted before the assessing officer which was not properly considered by the assessing officer. After considering the material available on record we find that neither the ld. CIT(A) has decided the issue in appeal on merit after taking into consideration the material placed in the assessment record nor the assessee has made compliance during the course of appellate proceedings. The ld. CIT(A) has dismissed the appeal of the assessee vide ex-parte order passed u/s 250 of the Act on the ground that assessee has failed to make compliance at the time of appellate proceedings. We consider that Section 250(6) of the Act contemplate that ld. CIT(A) would determine point in dispute and therefore record reason on such point in support of his conclusion The ld. CIT(A) ought to have adjudicated the case on merit after considering the material placed in the assessment record. In view of the above facts and

circumstances we consider it appropriate to restore the appeal filed by the assessee to the file of the ld. CIT(A) for deciding afresh on merit as contemplate in Sec. 250(6) of the Act after affording adequate opportunity to the assessee. The assessee is also directed to make proper compliance before the ld. CIT(A) without any failure. Therefore, the appeal of the assessee is allowed for statistical purposes.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 17.05.2024

Sd/-

(Vikas Awasthy)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 17.05.2024

Rohit: PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.