

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, MUMBAI**

**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 435/MUM/2024  
(Assessment Year: 2009-10)**

**N M Mehta & Company,**  
C/o Bhaskar B. Shah,  
Bapu Smruti, 4<sup>th</sup> Floor,  
3 Babulnath Road, above CBI,  
Mumbai - 400007  
[PAN: AADFN3080C]

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**Appellant**

**Income Tax Officer-  
Ward-17(2)(4), Mumbai,**  
Kautilya Bhavan, BKC, Bandra (E),  
Mumbai - 400051

Vs

.....

**Respondent**

**Appearance**

For the Appellant/Assessee : Shri Rajesh Shah  
For the Respondent/Department : Shri H.M. Bhatt

**Date**

Conclusion of hearing : 13.05.2024  
Pronouncement of order : 27.05.2024

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Assessee has challenged the order, dated 20/12/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2009-10, whereby the Ld. CIT(A) had partly allowed the appeal of the Assessee against the Assessment Order, dated 30/03/2015, passed under Section 147 read with Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Appellant has raised the following grounds of appeal:
  1.
    - a) *On the facts and circumstances of the case, CIT(A) erred in confirming the disallowance of interest u/s.36(1)(iii) of Rs.6,64,685 though the re-opening of the assessment was done on one ground and which has been deleted by the CIT(A), therefore the CIT(A) has no jurisdiction to disallow the other item of disallowance.*
    - b) *It is well settled law that there is no addition can be made of ground other than for which re-opening was done, if the ground for which re-opening was done has been deleted.*
    - c) *The appellant submits that assessment was re-opened in respect of alleged bogus purchase of Rs.6,075 only and the said ground has been deleted by CIT(A) and hence no other disallowance can be made.*
  2.
    - a) *On the facts and circumstances of the case, CIT(A) erred in confirming the disallowance of interest u/s.36(1)(iii) of Rs.6,64,685 though on facts the said disallowance is uncalled for.*
    - b) *On the facts and circumstances of the case and in law, the disallowance was wrongly confirmed though the partners of the firm had not withdrawn any amount but the debit balance was only on account of losses incurred and hence on facts the said disallowance is uncalled for.*
    - c) *The appellant submits that the disallowance may be deleted.”*
3. The relevant facts in brief are that the Appellant, a partnership firm, filed its return of income for the Assessment Year 2009-10 on 18/09/2009 declaring 'Nil' income. Vide Assessment Order, dated 30/03/2015, passed under Section 147 read with Section 143(3) of the Act, total income of the Appellant was assessed at INR 62,99,027/- after making, inter alia, disallowance of INR 6,64,685/- under Section 36(1)(iii) of the Act.
4. The reopening of assessment under Section 147 of the Act as

well as the above disallowance of interest under Section 36(1)(iii) of the Act was challenged in appeal before the CIT(A). Vide order, dated 20/12/2023, the CIT(A) partly allowed the appeal granting partial relief to the Appellant. However, the CIT(A) upheld the reopening of assessment and confirmed the disallowance of interest of INR 6,64,685/- under Section 36(1)(iii) of the Act.

5. Being aggrieved, the Appellant has carried the issue in appeal before the Tribunal.
6. The Learned Authorized Representative for the Appellant made following submissions:

*"On the facts and circumstances of the case and in law, the learned Assessing Officer erred in disallowing interest under section 36(1)(iii) of Rs.6,64,685/- without any basis and on surmise and conjecture.*

*The AO has disallowed the interest income on the basis that the appellant firm has given interest free loans of Rs. 1,46,127/- and there is a debit balance in the partners capital account amounting to Rs. 45,25,923/-*

*The appellant would like to state as under:*

*First of all, it may be stated that the appellant firm is making a loss for last 2 to 3 years and because of the said losses, the partners account has turned out to be a debit balance. In fact, there is hardly any withdrawal in partners capital accounts. The partners also paid on behalf of the firm the amount payable to the others and which has resulted into a debit balance in the firms accounts.*

*In fact, during the year itself an amount of Rs. 24,75,000/- was payable to the N M Mehta & Co(SD) for goods were debited to the partners account and hence the balances turned out to the debit balance. During the year there was loss of Rs.7,33,620/- and in year ended 31-03-2008 there was a loss of Rs. 33,59,611/-, which has resulted into debit balance of the partners. Similarly, in year ending March*

*2007 there was a loss and copy of the partners capital accounts are attached herewith which shows the amounts debited to the partners accounts.*

*Therefore, there were no withdrawal by the partners but it was only on account of the losses the current as well as of the earlier years and payments made on behalf of the firm which has resulted into debit balances of the partners. It may further be stated that there is a interest free loan of Tarun C Shah ex-partner of the firm of Rs. 23,17,108/-.*

*Considering the above facts, the AO has disallowed the interest without fully understanding the facts and also without considering the interest free loan outstanding in the books of accounts*

*In view of the above facts the appellant request your honour to delete the addition."*

7. Per contra, Learned Departmental Representative relied upon the order passed by the Assessing Officer and the CIT(A)
8. We have considered the rival submissions and perused the material on record.
9. On perusal of record, we find that the averments made by the Learned Authorized Representative for the Appellant to be factually correct. No loans/advances were granted by the Appellant to its partners from interest bearing funds. Therefore, the findings returned by the Assessing Officer are based upon the incorrect understanding of the fact. The Appellant firm had been making losses for last 2 to 3 years. During the relevant previous year the Appellant firm had incurred loss of INR 7,33,620/-, whereas for the immediately preceding Assessment Year 2008-09 there was loss of INR 33,59,611/-. Since partners share in accumulated losses were transferred to their respective accounts, there was a debit balance in the partner's capital account. On the other hand, during the relevant previous year

amount of INR 24,75,000/- was refunded on behalf of the Appellant-firm by the partners. Further, amount payable to one of the ex-partners on retirement was carried in the books as interest free loan from the retiring partner (i.e. Mr. Tarun C. Shah). Also there were no substantial withdrawals have been made by the partners. The aforesaid transactions/entries stood corroborated by the computation of income, financial statements for the relevant previous year, partners capital account and ledger accounts forming part of the paper-book [*which were also filed before the Assessing Officer and the CIT(A)*]. On perusal of the aforesaid documents, we find that no interest free loans/advances were granted by the Appellant-firm to its partners. Accordingly, disallowance of interest expenses of INR 6,64,685/- made under Section 36(1)(iii) of the Act is deleted. In terms of the above, Ground No. 2 raised by the Appellant is allowed while Ground No. 1 raised by the appellant is dismissed as being infructuous.

10. In terms of the aforesaid, the present appeal preferred by the Assessee is allowed.

Order pronounced on 27.05.2024.

**Sd/-**  
**(Amarjit Singh)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 27.05.2024  
Alindra, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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