

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

**Before: Ms. Suchitra Kamble, Judicial Member
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA No. 202/Ahd/2024
Assessment Year 2016-17**

The ITO, Ward-7(2)(1), Third Floor C Wing, Pratyaksh Kar Bhavan Ambawadi, Ahmedabad (Appellant)	Vs	Bharatkumar Dashrathbhai Patel, Ahmedabad PAN:ALHPP3745P (Respondent)
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**Assessee by: Shri Jignesh Parikh, A.R.
Revenue by: Shri J.L. Bhatia, Sr.D.R.**

Date of hearing : 03-06-2024
Date of pronouncement : 12-06-2024

आदेश/ORDER

PER : NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER:-

This appeal is filed by the Revenue against the order of National Faceless Appeal Centre, (NFAC) in short 'CIT(A)' dated 07/12/2023 for the assessment year 2016-17.

2. The brief facts of the case are that the assessee had filed return of income for assessment year 2016-17 on 14.10.2016 declaring total income of Rs. 8,63,440/. In the course of the assessment, the Assessing Officer (AO) noticed that the assessee had obtained unsecured loan of Rs. 2,47,69,244/- from various persons. The assessee was required to produce evidences to establish the identity, genuineness and creditworthiness of the loan creditors. The loan was taken from 20 creditors out of which the assessee could submit evidences in the form of confirmation, PAN, Aadhar, bank statement and income tax return in respect of four persons only; from whom aggregate unsecured loan of Rs. 85,49,244/- was obtained. In case of the remaining 16 creditors, no evidence was brought on record. Therefore the Assessing Officer treated the unsecured loan of Rs. 1,62,20,000/- obtained from 16 creditors as unexplained and made addition u/s. 68 of the Act. Further, another addition of Rs. 47,22,073/- was made in respect of interest expenses debited to P & L account. Aggrieved with the order of the Assessing Officer, the assessee had filed appeal before the first appellate authority which has been decided by the Id. CIT(A) vide the impugned order. Now the Revenue is in appeal before us.

3. The Revenue has taken following grounds in this appeal.

“(a) The Ld. CIT (A) has erred in law and on facts on deleting the Addition on account of unsecured loan of Rs. 1,62,20,000/- u/s. 68 of the IT Act.

(b) The Ld CIT (A) erred in law and on facts in deleting the disallowance of Rs 46,78,007/- on account of the interest expenses.

(c) The appellant craves leave in add, after and for to amend all or any the ground before the final hearing of the appeal.”

4. Shri J.L. Bhatia Id. Sr. D.R. relied upon the order of the Assessing Officer for the addition as made and submitted that the relief allowed by the Id. CIT(A) was not correct. On the other hand, Shri Jignesh Parekh, Id. A.R. of the assessee submitted that the assessee had filed additional evidences before the Id. CIT(A) who had allowed the relief to the assessee after obtaining remand report from the Assessing Officer. He relied upon the decision of *ITAT Delhi in the case of ACIT vs. Anu Bajaj 159 taxmann.com 1558* and submitted that when the relief was allowed on the basis of the remand report of the Assessing Officer, the revenue was precluded from filling further appeal before the Tribunal.

5. We have carefully considered the rival submission. It is found from the assessment order that addition of Rs. 1,62,20,000/- on account of unsecured loan was made only for the reason that assessee was unable to produce any evidence in respect of this loan from 16 creditors. In the course of the first appeal, the assessee had filed additional evidences in respect of unsecured loan taken from those 16 parties which was forwarded by the Id. CIT(A) to the Assessing Officer for his comments. The Id. CIT(A) has reproduced the Assessing Officer's remand report as well as JCIT's comments on the remand report in his order which is found to be as under:-

“I have gone through the submission made by the assessee and facts of the case. On verification of the case record of the assessee, it is noticed that at the time of assessment proceeding, the assessee has not submitted the complete details and documents related to the unsecured loans accepted from the persons and interest expenses. Now the assessee is submitting the full details and documents related to the unsecured loans and interest expenses and requested to admit additional

evidences keeping in view Rule 46A as the assessee was unable to submit during the assessment proceedings within the time allowed as it was time consuming as well as scanning and uploading on e-portal. It is therefore noticed that the contention raised by the assessee is found to be correct.

In present submission, the assessee has submitted the details with respect to unsecured loans and interest expenses as per Annexure-5 submitted before A.O. at the time of assessment proceedings and Annexure 6 requesting to admit as additional evidence. The same is verified, found satisfactory and believable

Regarding addition on account of interest expense of Rs.47,22,073, it is noticed that the assessee has paid Rs. 43,466/- as interest on late payment of TDS and VAT. The extra amount charged for such delayed payment is of punitive nature which cannot be said to have been incurred in the regular course of business. Accordingly, it is not an allowable expenditure.

Regarding admissibility of additional evidences, keeping in view Rule 46A

The admissibility regarding additional evidences submitted by the assessee before the Ld. C.LT (Appeals)-7, Ahmedabad, the same may be allowed keeping in view to Rule-46A, if applicable to the assessee as per Income-tax Rules.

The copy of the JCIT's letter forwarding AO's remand report is as under-

Kindly find enclosed herewith the above referred letter in the mentioned case submitted by ITO Wd 7(2) (1), Abad through this office.

2. Vide this letter the AO has objected to the admissibility of the additional evidences stating that sufficient opportunities were given to the assessee of being heard during the assessment proceedings However, the assessee was unable to submit the additional evidences as it was time consuming as well as scanning and uploading on e-portal The contention raised by the assessee is found to be correct by AO In such circumstances, may be admitted, in view of Rule 45A of the Income-tax Rules.

3. Regarding addition on account of interest expense of Rs 47,22,073/ noticed that the assessee has paid Rs. 43,466 as interest on late payment of TDS and VAT which is of punitive nature, hence not an allowable expenditure.”

6. The Id. CIT(A) has allowed relief to the assessee on the basis of the remand report of the Assessing Officer. It is found from the remand report that the assessee had submitted the full details and documents in respect of the unsecured loan as well as interest expenses which was verified by the

Assessing Officer and the evidence as produced was found satisfactory. There was no objection by the AO to the admission of the additional evidences as well. The Id. CIT(A) had, therefore, rightly deleted the addition on the basis of the additional evidences brought on record in the course of the appeal and the verification as was carried out by the Assessing Officer in the remand proceeding. We do not find anything wrong with the order of the Id. CIT(A). Therefore, the decision of the Id. CIT(A) to delete the addition in respect of unsecured loan of Rs. 1,62,20,000/- is upheld.

6. The addition of Rs. 46,78,007/- in respect of interest was also deleted by the Id. CIT(A) on the basis of remand report of the Assessing Officer. This addition was made by the Assessing Officer for the reason that the details and documents in respect of interest expenses was not submitted in the course of the assessment proceedings. The assessee had filed the relevant details before the Id. CIT(A) which was forwarded to the Assessing Officer for his comments. The Assessing Officer in his remand report had categorically admitted that the interest expenses was allowable except an amount of Rs.43,466/- on account of interest for late payment TDS and VAT. Accordingly, the Id. CIT(A) had restricted the addition to Rs. 43,466/- as recommended by the Assessing Officer. The decision of Id. CIT(A) on this issue is, therefore, also upheld.

7. It is thus found that the relief was granted by the Id. CIT(A) on both the issues on the basis of the remand report of the Assessing Officer, which was duly endorsed by the JCIT. The Revenue has filed the present appeal without pointing out anything adverse in the remand report of the lower

authorities. It is also not the contention of the Revenue that the remand report of the AO was wrong or that the remand report was sent without carrying out any verification or without application of mind. The appeal filed by the Revenue in the present case is, therefore, found to be without proper appreciation of the facts of the case. It was held in the course of *Anu Bajaj supra* that when the relief was granted based on the remand report of the Assessing Officer, Revenue would be precluded from filing further appeal before the Tribunal. With the consistent emphasis of the CBDT to reduce litigation, it was not proper for the Revenue to file this appeal without pointing out any defect in the remand report sent by the lower authorities; based on which relief was allowed by the Id. CIT(A) .

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

Order pronounced in the open court on 12-06-2024

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER
Ahmedabad : Dated 12/06/2024

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER
True Copy

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार

आयकर अपीलीय अधिकरण,
अहमदाबाद