

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BENGALURU “B” BENCH, BENGALURU**

**Before Shri Waseem Ahmed, Accountant Member  
and  
Shri Soundararajan K. Judicial Member**

<b>ITA No. 891/Bang/2023</b> (Assessment Year:2015-16)		
Mr. Narayan Datar Singh Prop. Udawat Engineering Works No. 78, 4th Phase Bommasandra Indl. Area Bengaluru 560099 PAN – AINPS9977R (Appellant)	vs.	ACIT, Circle - 4(3)(1) BMTC Building Koramangala Bengaluru 560095 (Respondent)
Assessee by: Shri N Rama Raju, CA		
Revenue by: Shri Subramanian S., JCIT		
Date of hearing: 29.05.2024		
Date of pronouncement: 11.06.2024		

**ORDER**

**Per: Soundararajan K., J.M.**

This appeal by the assessee is directed against the order passed by the National Faceless Appeal Centre, Delhi (‘the CIT(A)’) under Section 250 of the Income Tax Act, 1961 (the Act) dated 27,09.2023 for the Assessment Year (AY) 2015-16.

2. Assessee has raised the following grounds of appeal: -

“1. *The order passed by the learned Commissioner of Income-Tax (Appeals) NFAC to the extent is against to the Appellant is bad in law and contrary to the settled principles of law.*

2. *The Appellant denies itself liable to be taxed in excess of returned income of Rs.61,27,360/- under the facts and circumstances of the case.*
3. *The learned Commissioner of Income Tax (Appeals) NFAC erred in law in not holding that the order of assessment is barred by limitation under the facts and circumstances of the case.*
4. *The learned Commissioner of Income-Tax (Appeals) NFAC erred in law in placing reliance on the 'wrong date' of communication of assessment order as mentioned in the Form-35 and recording a perverse finding as against the established material evidences w.r.t actual date of serving of order of assessment as were placed on record during the course of appellate proceedings under the facts and circumstances of the case.*
5. *The learned Commissioner of Income-Tax (Appeals) NFAC erred in law in not appreciating that the learned Assessing Officer was not justified in rejecting the submission of the Appellant w.r.t 143(3) proceedings and in contrary accepting the same set of submission while concluding the proceedings under the provisions of section 147 r.w.s 143(3) of the Act w.r.t creditworthiness of the lenders, which amounts to approbating and reprobating on the same set of material under the facts and circumstances of the case.*
6. *The learned Commissioner of Income-Tax (Appeals) NFAC erred in law in not holding that the appellant was entitled to relief on the total additions of Rs.54,12,658/- and erred in law in restricting the relief to the extent of Rs.13,52,658/- (i.e., 25% of Rs.54,12,658/-) under the facts and circumstances of the case.*
7. *The learned Commissioner of Income-Tax (Appeals) NFAC erred in law in providing partial relief of 25% of the loans without placing on record on any cogent material for rejecting the submission of the Appellant to provide relief in entirety under the facts and circumstances of the case.*
8. *The learned Commissioner of Income-Tax (Appeals) NFAC erred in not holding that the learned Assessing Officer is not justified in levying interest under the provisions of section 23B and 234C of the Act at Rs.6,35,052/- and Rs.1,61,010/ respectively under the*

*facts and circumstances of the case. Without prejudice the rate, period and quantum on which the interest is levied is not discernible under the facts and circumstances of the case.”*

3. The brief facts of the case are that the assessee is an individual having business income and during the assessment year 2015-16 the ld. Assessing Officer (AO) issued limited scrutiny notice under Section 143(2) of the Act and sought for details about the loans obtained by the assessee from third parties. The assessee produced documents to show that the amounts are obtained by loans from various persons and also submitted their details apart from the confirmations given by the creditors. Not satisfied with the same, the AO made the assessment treating the said unsecured loans as unexplained cash credit under Section 68 of the Act. The assessee challenged the said proceedings by filing an appeal before the learned CIT(A) and contended that the creditors are having creditworthiness and filed the copies of their return of income, Balance Sheet and bank statements to show that the loans are genuinely obtained ones. The learned CIT(A), without considering the submissions made by the assessee, had rejected the claim of the assessee but restricted the addition made under Section 68 of the Act to 75% and granted relief to 25% of the total loan amount. Aggrieved, the assessee is in appeal before us with the abovementioned grounds of appeal.

4. The learned A.R. of the assessee, at the time of hearing, had submitted that the AO had not made proper enquiries and also not examined the third party creditors in spite of the fact that all the details were given to him. Further the learned A.R. contended that the payment of interest to the creditors for the disputed year has been accepted and allowed by the AO and therefore the non acceptance in respect of the loan amount is not correct. Therefore, the learned A.R. contended that the adoption of percentage by the learned CIT(A) for granting relief of 25% is without any basis and therefore prayed to allow the

appeal filed by the assessee. The Id AR also relied on the order of the ITAT, Ahmedabad in ITA No.3860/AHD/1992 dated 15.09.2000, in the case of Rohini Builders vs. D.C. of I.T which is on similar facts, which was confirmed by the Gujarat High Court in the judgement reported in (2003)127 Taxman 523. The Id AR also filed two paper books and enclosed various documents including the order passed by the Id AO in respect of the allowance of the interest given to the creditors for the disputed A/Y in respect of the very same loan amounts.

5. The learned D.R. relied on the orders of the lower authorities and contended that the learned CIT(A) had granted sufficient relief and the same may be confirmed by dismissing the appeal of the assessee. The Id DR also filed written arguments and contended that the credit worthiness of the unsecured creditors has not been established and therefore the addition made u/s 68 of the Act is correct.

6. We have heard the rival contentions and perused the materials available on record. As seen from the assessment order as well as the appellate order the authorities have not made any enquiry or examination of the third party creditors eventhough the assessee had produced all the relevant details such as PAN and other documents. The learned CIT(A) also not considered the various documents filed before him but partly allowed the appeal by confirming 75% of the loan amount as unexplained cash credit and granted relief in respect of 25% of the total loan amount for the reason that the appellant had submitted that these lenders had accumulated credits in their bank accounts. Therefore the learned CIT(A) had accepted that the creditors had accumulated credits in their bank account but curiously granted relief only in respect of 25% of the loan amount. The CIT(A) also not considered the order passed by the Id AO under Section 147 r.w.s. 144B of the Act on

24.03.2022 in respect of the same assessee, for the same assessment year, in which the claim of the assessee towards interest payment made to the creditors were allowed with the following observations: -

*“The assessee has furnished required documents, i.e., copy of ledger accounts, bank statement, ITR and 26AS to prove the identity, genuineness and creditworthiness of the recipients of interest paid by the assessee during the year under consideration.”*

Therefore, while passing the order dated 24.03.2022 the AO accepted the creditors as genuine and allowed the interest paid to them. Therefore, the argument made by the learned A.R. that once the interest payment has been accepted by the authorities, the unsecured loan amount has also to be treated as genuine one and the unsecured creditors are having creditworthiness. This argument of the Id AR seems to be a reasonable. In fact against the said order, the Id DR is also not able to show that further proceedings are pending and therefore as on date the said proceedings attained finality.

7. We have also given our careful consideration to the order of the Ahmedabad Bench of the ITAT in ITA No 3860/AHD/2000 dated 15.09.2000 wherein it was held that, “thus, taking into consideration the totality of the facts and circumstances of the case, and in particular the fact that the assessing officer had not disallowed the interest claimed/paid in relation to those credits in the assessment year under consideration or even in subsequent years and TDS had been deducted out of the interest paid/credited to the creditors, the departmental authorities were not justified in making the addition. The addition was, accordingly deleted.”

The principles laid down by the Ahmedabad Bench of the ITAT would equally apply to the facts of the case and therefore addition confirmed by the CIT(A) is unwarranted.

8. We, therefore, find that the order of the learned CIT(A) restricting the 75% of the loan amount u/s 68 of the Act is without any basis and also without considering the various records produced by the assessee including the order passed by the Id. AO in which the interest given to the very same creditors were allowed treating them as genuine persons and, therefore, we set aside the order of the CIT(A) and allow the appeal of the assessee.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 11<sup>th</sup> June, 2024.

Sd/-  
**(Waseem Ahmed)**  
**Accountant Member**

Sd/-  
**(Soundararajan K.)**  
**Judicial Member**

Bengaluru, Dated: 11<sup>th</sup> June, 2024  
n.p.

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT, concerned*
4. *The DR, ITAT, Bengaluru*
5. *Guard File*

//True Copy//

*By Order*

*Assistant Registrar*  
*ITAT, Bengaluru*