

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E", MUMBAI

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA 4126/Mum/2023  
(Assessment year : 2012-13)**

<b>Krishna Palace Residency Pvt Ltd</b> 96-98, Sleater Road, Nana Chowk, Grant Road(West), Mumbai-400 007 <b>PAN : AACCK2077J</b>	<b>vs</b>	<b>Dy.Commissioner of Income-tax-5(2)(1), Mumbai</b> Room No.571, 5 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by : Dr. K Shivram a/w Shashi Bekal  
Respondent by : Shri P.D. Choughule (Addl.CIT) SR DR  
Date of hearing : 19/06/2024  
Date of pronouncement : / 06/2024

**ORDER**

**PER ANIKESH BANERJEE, J.M:**

Instant appeal of the assessee is preferred against the order of the Commissioner of Income-tax, Appeal Addl / JCIT (A)-2, Coimbatore[for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2012-13, date of order 20.10.2023.The impugned order was emanated from the order of the Ld.Deputy Commissioner of Income-tax-5(2)(1),Mumbai (in short, 'the A.O.') passed under section 143(3)of the Act date of order20/03/2015.

2. The impugned order has been assailed by the assessee on the following grounds of appeal before us: -

“1. That on the facts and circumstances of the case and in law the Ld. National Faceless Appeal Centre (NFAC) has erred in exceeding the jurisdiction under section 251 of the Income-tax Act, 1961 (Act) by making an enhancement under section 251 of the Act which was not the subject matter of appeal before the Ld. Commissioner of Income-tax (Appeals) [CIT(A)], the Ld. CIT(A) has no power to enhance the assessment which was not the subject matter of the appeal thereby the disallowance of interest expense of Rs. 54,84,478/- and loan processing fee of Rs. 3,00,400/- under section 36(1)(iii) of the Act as the Ld. Assessing Officer had allowed the interest as an allowable deduction.

2. Without prejudice to the above, on the facts and circumstances of the case and in law the Ld. NFAC has erred in making the disallowance of interest expense of Rs. 54,84,478/- and loan processing fee of Rs. 3,00,400/- under section 36(1)(iii) of the Act as the proviso is not applicable to the facts of the appellant. -

3. Without prejudice to the above, the amount borrowed was utilised for the expansion of the existing hotel business hence the interest and processing charges are allowable as business expenditure of the appellant.

4. The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal.”

2.1 The impugned order has been assailed by the assessee on the following

Additional grounds of appeal before us: -

“1. That on the facts and circumstances of the case and in law the Ld. National Faceless Appeal Centre (NFAC) has erred in making a disallowance of interest expense of Rs. 54,84,478/- and loan processing fee of Rs. 3,00,400/- under section 35(I)(iii) of the Income-tax Act, 1961 (Act) without considering the submissions made by the appellant before the NFAC.

2. That on the facts and circumstances of the case and in law the Ld. NFAC has erred in making a disallowance of interest expense of Rs. 54,84,478/- and loan processing fee of Rs. 3,00,400/- under section 35(I)(iii) of the Act without providing an opportunity for a video conferencing as mandated in the Faceless Appeal Scheme.

3. *The Appellant craves leave to add, amend, alter or delete any or all the above grounds of appeal.”*

3. The brief fact of the case is that the assessment was completed with an addition U/s 14A read with rule 8D of the Income-tax Rules, 1962 (in short, the 'Rule') and addition amount of Rs.11,90,410/- and also the difference of interest income in mismatching the statement of TDS claim in return of income and the interest from bank. The difference in amount is Rs.1,570/-. Both the amounts are added back to the total income of the assessee. Being aggrieved, the assessee filed an appeal before the CIT(A). The Ld.CIT(A) deleted the addition amount of Rs.11,90,410/- U/s 14A r.w.r. 8D of the Rule. On the other sense, by applying the provisions of section 251(2) enhanced the income amount to Rs.3,00,400/- towards loan processing charges and the interest amount to Rs.54,84,478/- attributable to investment made in Hotel Sun & Sea Pvt Ltd under section 36(1)(iii) of the Act. Being dissatisfied with the appeal order, the aggrieved assessee filed an appeal before us by challenging the enhancement made by the Ld.CIT(A).

4. The Ld.AR argued and filed a written submission which is kept in the record (in short APB). The Ld.AR argued that the assessee is a resident company and engaged in business of hotel and lodging. For the year ended 31-03-2022 in impugned assessment year, the assessee borrowed funds to invest in 9500 equity shares in Hotel Sun & Sea Pvt Ltd to expand its business of hotel industry. The addition was made by Ld.AO U/s 14A. The said addition was duly deleted by the Ld.CIT(A). By pursuing section 251(1A)(a) r.w.s. 251(2), the Ld.CIT(A) has made

the addition of interest expenses of Rs.54,84,478/- and loan processing fee amount of Rs.3,00,400/- under section 36(1)(iii) of the Act.

5. The Ld.AR relied on the order of the Hon'ble **Apex Court** in the case of **CIT vs Shapoorji Pallonji Mistry (1962) 44 ITR 891 (SC)**. The relevant paragraph is reproduced as below: -

*"The learned Chief Justice in the judgment under appeal considers that this court has thus given approval to his view and also the view of the Patna High Court in the earlier case. In our opinion, this court must be held not to have expressed its final opinion on the point arising here, in view of what was stated at pages 709 and 710 of the report. This court, however, gave approval to the opinion of the learned Chief Justice of the Bombay High Court that section 31 of the Income-tax Act confers not only appellate powers upon the Appellate Assistant Commissioner in so far as he is moved by an assessee but also a revisional jurisdiction to revise the assessment with a power to enhance the assessment. So much, of course, follows from the language of the section itself. The only question is whether in enhancing the assessment for any year he can travel outside the record that is to say, the return made by the assessee and the assessment order passed by the Income-tax Officer with a view to finding out new sources of income not disclosed in either. It is contended by the Commissioner of Income-tax that the word "assessment" here means the ultimate amount which an assessee must pay, regard being had to the charging section and his total income. In this view, it is said that the words "enhance the assessment" are not confined to the assessment reached through a particular process but the amount which ought to have been computed if the true total income had been found. There is no doubt that this view is also possible. On the other hand, it must not be over looked that there are other provisions like sections 34 and 33B, which enable escaped income from new sources to be brought to tax after following a special procedure. The assessee contends that the powers of the Appellate Assistant Commissioner extend to matters considered by the Income-tax Officer, and if a new source is to be considered, then the power of remand should be exercised. By the exercise of the power to assess fresh sources of income, the assessee is deprived of a finding by two tribunals and one right of appeal.*

*The question is whether we should accept the interpretation suggested by the Commissioner in preference to the one, which has held the field for nearly 37*

*years. In view of the provisions of sections 34 and 33B by which escaped income can be brought to tax, there is reason to think that the view expressed uniformly about the limits of the powers of the Appellate Assistant Commissioner to enhance the assessment has been accepted by the legislature as the true exposition of the words of the section. If it were not, one would expect that the legislature would have amended section 31 and specified the other intention in express words. The Income-tax Act was amended several times in the last 37 years, but no amendment of section 31(3) was undertaken to nullify the rulings, to which we have referred. In view of this, we do not think that we should interpret section 31 differently from what has been accepted in India as its true import, particularly as that view is also reasonably possible.”*

6. The Ld.AR further relied on the order of the Hon’ble **Delhi High Court** in the case of **CIT vs Sardari Lal & Co.(2001) 251 ITR 864 (Del)(HC)**. Held

*“8. Looking from the aforesaid angles, the inevitable conclusion is that whenever the question of taxability of income from a new source of income is concerned, which had not been considered by the Assessing Officer, the jurisdiction to deal with the same in appropriate cases may be dealt with under section 147/148 and section 263, if requisite conditions are fulfilled. It is inconceivable that in the presence of such specific provisions, a similar power is available to the first appellate authority. That being the position, decision in Union Tyres'case (supra) of this Court expresses the correct view and does not need re-consideration. This reference is accordingly disposed of.”*

7. The Ld.DR argued and fully relied on the order of the revenue authorities.

8. We heard the rival submission and considered the documents available in the record. Ld.CIT(A) deleted the addition made by the Ld.AO for contravening Section 14A. On the other hand, the Id. CIT(A) also enhanced the amount of Rs.54,84,478/- related to interest expenses and the loan processing fee Rs.3,00,400/- U/s 36(1)(iii) of the Act. The Id. AR informed that the enhanced addition U/s 36(1)(iii) of the Act has never been discussed in the assessment order or not mentioned in any notice for assessment. The issue was newly brought in

the picture by the Ld.CIT(A). The section 251(1A)(a) r.w.s. 251(2) empowered the Ld. CIT(A) for enhancement but only restricted to the addition made by the Ld. Assessing Authority. We respectfully relied on the order of Hon'ble Apex Court in **Shapoorji Pallonji Mistry** (supra) wherein it was held that it would not be open to AAC to introduce into assessment new source, as his power of enhancement is restricted only to the income which was subject matter of consideration for the purpose of assessment by the Ld.AO. We are also taking power from **Sardari Lal & Co.** (supra) where the question of taxability of income from a new source of income is concerned, which has not been considered by the Ld.AO. The Ld. DR is unable to place any contrary judgment against the submission of the Ld. AR. So, the entire enhancement in appeal order is unjustified. Accordingly, we delete the enhancement made by Ld.CIT(A) amounting to Rs.3,00,400/- towards loan processing charges and Rs.54,84,478/- being interest expenditure claimed U/s 36(1)(iii) of the Act. We are not adjudicating the merit of the case which is only for academic purpose. The appeal of the assessee is succeeded.

8. In the result, the appeal of the assessee bearing **ITA No.4126/Mum/2023** is allowed.

Order pronounced in the open court on \_\_\_\_\_ day of June, 2024.

(GAGAN GOYAL)  
ACCOUNTANT MEMBER  
Mumbai, दिनांक/Dated: /06/2024  
Pavanan

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), ITAT, Mumbai