

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

**BEFORE SHRI PRASHANT MAHARISHI, AM**

**ITA No. 248/Mum/2024**

(Assessment Year: 2017-18)

Hasmukhlal Harjivandas Shah  
E/7 Lakshmi Industrial Estate,  
Station Road,  
Bhayander West,  
Mumbai-401101

Vs.

Income Tax Officer  
Ward 32(1)(5),  
Mumbai

**(Appellant)**

**(Respondent)**

**PAN No. AAAHH0927F**

**Assessee by** : Shri Satya Prakash Singh, AR  
**Revenue by** : Shri R.R. Makwana, DR

**Date of hearing:** 03.06.2024  
**Date of pronouncement :** 27.06.2024

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. ITA No. 248/Mum/2024 is filed by Hasmukhlal Harjivan Shah Huf (assessee /appellant) against the appellate order passed by Addl. Commissioner of Income-tax (Appeals)-5 [the learned CIT (A)] Kolkata for A.Y. 2017-18, dated 9<sup>th</sup> January, 2024, wherein the appeal filed by the assessee against the assessment order dated 23<sup>th</sup> December, 2019, passed under Section 143(3) of the Income-tax Act, 1961 (the Act) by the Income Tax Ward 32(5), Mumbai (the learned Assessing Officer), was dismissed. The assessee aggrieved with the same has preferred this appeal.
02. The brief facts of the case shows that the assessee is a HUF filed its return of income declaring total income of ₹8,11,670/- on 27<sup>th</sup> July, 2017. The case was selected for limited scrutiny and notice under Section 143(2) of the Act was served on 10<sup>th</sup> August, 2018. During

the assessment proceedings, it was found that assessee has offered interest income under the head of interest from other sources and also claimed deduction under Section 57(iii) of the Act. Assessee has offered interest income from loans and advances of ₹41,48,006/- and has claimed deduction under Section 57(iii) of the Act of interest expenditure of ₹32,30,943/-. The assessee was asked to show cause about the claim of deduction under Section 57(iii) of the Act. The assessee submitted that the assessee has paid interest to some of the parties at the rate of 12% and to the borrower the interest was paid at the rate of 15%. Due to economic slowdown the parties to whom the loans were provided the interest rates were negotiated at the rate of 12%. Thus, the assessee has paid interest at the rate of 12% and has also earned interest at the rate of 12%.

03. The learned Assessing Officer was of the view that as assessee agreed to charge interest at the rate of 15% but calculated interest only at the rate of 12%. The learned Assessing Officer worked out 3% different of interest and added the sum of ₹9,35,523/- to the total income of the assessee by disallowing deduction under Section 57(ii) of the Act.
04. The assessment order under Section 143(3) of the Act was passed on 23<sup>rd</sup> December, 2019, determining the total income of the assessee at ₹17,47,193/-.
05. Aggrieved assessee preferred the appeal before the learned CIT (A), wherein the order of the learned Assessing Officer was confirmed and therefore, the assessee is in appeal.
06. We have heard the rival contention. The fact shows that the assessee has earned interest income of ₹37,42,093/- and have incurred



expenses of ₹30,84,320/- resulting into net interest income of ₹6,57,773/-. The learned Assessing Officer has assumed that assessee should have earned interest income from loans given at the rate of 15% and thereby made the addition at the rate of 3%. This is against the actual interest received by the assessee which are supported by loan confirmation and form no.26AS. In response to reply under Section 133(6) of the Act also payer of interest confirmed interest as offered by assessee. The parties confirmed to have paid interest at the rate of 12% as the interest income amount what is accounted for. Therefore the amount of addition made by ld AO has neither accrued to the assessee nor received. The learned Assessing Officer also does not have any evidence that assessee received more interest than interest than what is shown. In view of this, the addition made by the learned Assessing Officer of ₹9,35,523/- is incorrect and hence, deleted. Ground no.2 of the appeal of the assessee is allowed.

07. Other grounds of appeal are supportive only and hence not adjudicated.
08. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 27.06. 2024.

Sd/-

(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 27.06. 2024

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT



4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai