

आयकर अपीलीय अधिकरण, कोलकाता पीठ “सी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
श्री राजपाल यादव, उपाध्यक्ष एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष
[Before Shri Rajpal Yadav, Vice-President & Shri Rajesh Kumar, Accountant Member]

I.T.A. Nos. 310& 311/Kol/2023
Assessment Years: 2007-08 & 2008-09

Seikh Abdul Sabir (PAN: AZAPS 9812 M)	Vs.	CIT(A), Burdwan
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	03.07.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	23.07.2024
For the Appellant/ निर्धारिती की ओर से	Shri Soumitra Choudhury, Advocate Shri Rajeeva Kumar, Advocate
For the Respondent/ राजस्व की ओर से	Shri Arun Kanti Dutta, Addl. CIT Sr. D.R

ORDER / आदेश

Per Rajesh Kumar, AM:

These are the appeals preferred by the assessee against the separate orders of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)”) dated 31.01.2023& 24.02.2023 for the AY 2007-08& 2008-09 respectively. Since there are same common issued involved in these appeals , they are being clubbed together and disposed of by this common order for the sake of brevity. First of all, we shall take up in ITA No. 310/Kol/2023 for AY 2007-08.

2. The assessee has raised revised grounds of appeal which is as under:

- a) *For that on the facts of the case, the order passed by the Ld. C.I.T.(A) on 31.01.2023 is completely arbitrary, unjustified and illegal.*
- b) *For that on the facts of the case, both the Ld. CIT(A) as well as the A.O. has not followed the direction of Ld. ITAT's order dated 25.09.2019, therefore, the whole order is completely arbitrary, unjustified and illegal.*
- c) *For that on the facts of the case, the Ld. C.I.T(A) was wrong in dittoing the order of the A.O. and confirming the disallowance of Rs.1,53,66,693/- as interest expenses claimed u/s. 37(1) of the I.T. Act for the loan account in ICICI bank of M/s. Krishi Bikash which is completely arbitrary, unjustified and illegal.*
- d) *For that on the facts of the case, the Ld. C.I.T.(A) was wrong in dittoing the order of the A.O. and confirming the addition of Rs.4,09,21,440/- as difference of advances shown in balance sheet of M/s. Dakshin Damodar Cold Storage Pvt. Ltd., treating the same as unaccounted investment u/s. 69 of the I.T. Act which is completely arbitrary, unjustified and illegal.*
- e) *For that on the facts of the case, the Ld. CIT(A) was wrong in sustaining the addition of Rs.1,38,87,859/- as interest income of FD from various Bank which is completely arbitrary, unjustified and illegal.*
- f) *For that the appellant reserves the right to adduce any further ground or grounds, if necessary, at or before the hearing of the appeal.*

3. The facts in brief are that the Assessee is an individual was engaged in the relevant assessment in the trade of rice, paddy procuring , pulses, potato besides running trucks on hire, name & style of proprietorship business M/s. Krishi Vikas, M/s. Damodar Builders, M/s. Raihana Enterprise, M/s. Narayanpur Agro Tech and also managing director of M/s. Dakshin Damodar Cold Storage Pvt. Ltd., M/s. Dakshin Damodar Rice Mill Pvt. Ltd., M/s. Jalaram Cold Storage Pvt. Ltd. During the year he filed the return of income declaring total income of Rs.1,96,390 after setting off carried forward loss from AY 2006-07 of Rs.1,35,26,978. By an order of Assessment u/s.143(3) of the Act, dated 23.12.2009, the Assessing Officer (AO) did not allow the set off of carried forward loss claimed by the Assessee on the ground that the loss declared by the Assessee on the ground that in the Assessment order dated

31.12.2008 for AY 2006-07, the loss declared by the Assessee in the return of income had turned into a positive income of Rs.8,21,119/- and proceeded to determine the total income of the Assessee by adopting the profit as per Profit and Loss Account of Rs.1,38,07,106/-. Aggrieved by the order of the AO, the Assessee preferred appeal before the first appellate Authority Commissioner of Income Tax (Appeals) {CIT(A)}, who called for a remand report on some issues. The CIT(A) enhanced the income of the Assessee by making the following additions:

Embezzlement of funds from ICICI Bank u/s.28(iv) Rs.27,60,38,657
r.w.Sec.2(24)

Unexplained Investments in FD Rs.10,36,34,830

Interest /Finance charges paid to Bank Rs. 1,80,25,512

4. On further appeal by the Assessee, the ITAT, Kolkata “C” Bench in ITA No. 1259/KOL/2015 Dated 20.9.2019 held that the addition on account of embezzlement of funds from ICICI Bank was unsustainable and that the Assessee had availed loan from the said Bank and thus granted telescopic benefits with regard to the other two additions by way of enhancement made by the CIT(A) viz., unexplained investments in FD and interest/Finance Charges paid to Bank. The tribunal also made an observation that the AO will examine all the interconnected issues as per law (Paragraph 3 at Page-4 of the order). While dealing with the issues for AY 07-08, vide Paragraph 10, the Tribunal specifically made the following observations:

“10. We now advert to assessee’s second appeal ITA 1259/Kol/2015 (Assessment Year 2007-08). Its first substantive ground is declined being general in nature. His other grounds raise the issues of brought forward losses disallowance (supra) and corresponding addition of embezzled funds ICICI bank, Interest received, FD investment, coupled with interest and finance charges etc., already stand adjudicated in the preceding paragraphs. We therefore accept this instant appeal (ITA 1259/Kol/2015) partly for statistical purpose in foregoing terms.”

5. Thus this is the second round before the Tribunal as the tribunal vide its order dated 20.09.2019 has restored certain issues as stated hereinabove to the file of the AO. Now vide grounds No.1 and 2 of the revised grounds of appeal, the assessed has challenged the action of the AO in going beyond the scope of the order of the Tribunal passed in ITA 1259/Kol/2015. In grounds No.3 of the revised grounds of appeal, the

assessee assailed the addition on account of interest expenses of Rs.1,53,66,693/- by the AO. In ground No.4 the addition of Rs.4,09,21,440/- was challenged as made by the AO and sustained by the CIT(A) on account of difference in advances shown as due and payable by the Assessee to Dakshin Damodar Cold Storage Pvt.Ltd.(DDCS) in its books vis a vis as per the books of DDCS and in ground No.5 addition of interest income on FDs with various banks of Rs.1,38,87,859/- was assailed.

6. In so far as ground no.1 and 2 of the revised grounds are concerned, the Assessee in the said grounds has challenged the action of the AO in going beyond the scope of the order of the Tribunal passed in ITA 1259/Kol/2015. As already mentioned, the Assessee filed return of income for A.Y.2007-08, declaring total income of Rs.1,96,390 after setting off carried forward loss of AY 2006-07 of Rs.1,35,26,978. However vide assessment order passed u/s.143(3) of the Act, dated 23.12.2009, the AO did not allow the set off of loss claimed by the Assessee on the ground that in the assessment order dated 31.12.2008 for AY 2006-07, the loss declared by the Assessee in the return of income had resulted in a positive income of Rs.8,21,119/-. The AO therefore proceeded to determine the total income of the Assessee by adopting the profit as per Profit and Loss Account of Rs.1,38,07,106/-.

7. Aggrieved by the order of the AO, the Assessee preferred an appeal before the CIT(A). The CIT(A) in the course of the appellate proceedings before him noticed that the Assessee had availed of loan facility under Retail Warehouse Receipt Based Finance Scheme (WMA) of Rs.27,60,38,657 in the Proprietary business of the Assessee namely "Krishi Bikash". The CIT(A) also found that the said loan was not repaid by the Assessee and accordingly treated the same as income of Assessee u/s.28(iv) read with Sec.2(24) of the Act. Besides the above, the CIT(A) noticed that the Assessee had shown FD & TDS of Rs.10,36,34,830/- and has also paid interest and finance charges of Rs.1,80,25,512/- during the year. The Ld. CIT(A) therefore called upon the assessee to explain the source of funds for making the aforesaid FDs and also the source of funds out of which interest and finance charges were paid. Finally,

the CIT(A) enhanced income of the assessee as proposed in the notice of enhancement apart from confirming the order of the AO by making the following additions:

Embezzlement of funds from ICICI Bank Rs.27,60,38,657
 u/s.28(iv)r.w.Sec.2(24)

Unexplained Investments in FD Rs.10,36,34,830

Interest /Finance charges paid to Bank Rs. 1,80,25,512

8. The Assessee challenged the addition made by the AO as well as the addition made by the CIT(A) in exercise of his powers of enhancement, before the Tribunal in ITA No.1259/Kol/2015. The Tribunal while deciding the said appeal by its order dated 20.9.2019, held that the addition on account of embezzlement of funds from ICICI Bank was unsustainable and that the source of funds for investment in FDs and payment of interest and finance charges can be treated as explained from and out of the loan availed from ICICI Bank. The relevant observations of the Tribunal in Paragraph-3 and 10 are extracted below:

“We find no reason to sustain the above stated additions of the so called embezzled funds added by way of enhancement in the CIT(A)’s order under challenge. He has himself made it clear that the Assessee and his private limited companies (supra) had raised the ICICI Bank loans in question. That being the case, it can be very well inferred that the same are not explained cash credits. There is also no material on record in the CIT(A)’s corresponding discussion that the said loan liability has been subject matter of remission or cessation u/s.41(1) of the Act. So is the case with the Assessee’s fixed deposit and interest, finance charges which prima facie has a nexus with the loan amounts only. Faced with this factual position, we direct the Assessing Office to treat the Assessee’s loan fund amounts raised in his name or in the case of the private limited concerns (supra) as duly explained and grant telescoping benefit to him regarding source of his fixed deposit as well as interest/finance charges. He shall then re-examine this entire inter connected issue as per law within three effective opportunities of hearing. This interconnected issue is taken as accepted for statistical purposes.”

“ 10. We now advert to assessee’s second appeal ITA 1259/Kol/2015 (Assessment Year 2007-08). Its first substantive ground is declined being general in nature. His other grounds raise the issues of brought forward losses disallowance (supra) and corresponding addition of embezzled funds ICICI bank, Interest received, FD investment, coupled with interest and finance charges etc., already stand adjudicated in the preceding paragraphs. We therefore accept this instant appeal (ITA 1259/Kol/2015) partly for statistical purpose in foregoing terms.”

9. Therefore it is apparently clear that the above issues sought to be examined by the AO in the set aside proceedings are beyond the scope of the order of the Tribunal. All

that the AO ought to have done is to examine the quantum of carried forward loss of AY 2006-07 which needs to be set off against income of AY 2007-08. The quantum of carried forward loss is again dependent on the outcome of the determination of total income in AY 2006-07. Therefore in AY 2007-08, the AO in the set aside proceedings had no jurisdiction to go into the various issues, which he sought to examine and he could not have made any addition on unconnected issues which were not subject matter of remand by the tribunal.

10. After carefully perusing the facts available on record we note that the additions made by the AO in the said order of Assessment related to i) addition on account of interest expenses of Rs.1,53,66,693/-,ii) Addition of Rs.4,09.21,440/- on account of difference in Advances shown as due and payable by the Assessee to Dakshin Damodar Cold Storage Pvt.Ltd.(DDCS) in its books and as per the books of DDCS iii) Addition on account of interest income on FDs with various banks of Rs.1,38,87,859/- and iv) addition of Rs.26,22,000/- on account of unaccounted FDs. None of the above additions can be said to fall within the ambit of the order of remand passed by the Tribunal for AY 2007-2008. Considering the above facts before us we are inclined to hold that the AO has travelled beyond the scope of remand by the tribunal. In the set aside / remand proceedings, the AO has very limited power to examine the issues in the set aside proceedings to the extent as directed by the tribunal and does not have the power to exercise the unfettered jurisdiction to make the additions. In our opinion, the AO can exercise power in the set aside proceedings/ remand proceedings only to the extent as directed by the authorities concerned in its order. In our conclusion we are supported by a series of decisions of various High Courts which are discussed hereinafter. In the case of Basudeo Prasad Agarwalla vs. ITO & Ors 180 ITR 388 (Cal) ,the Hon'ble Calcutta High Court has held that if the order of remand is open and the authorities concerned, after remand, can exercise the jurisdiction in accordance with law, there is nothing for the court to regulate such action; but at the same time, this court observes that if the scope of remand is limited, after remand, the authorities cannot enlarge the same and make an assessment beyond

the scope of the order of remand. The Court observed that the authorities concerned, after remand, are certainly entitled to proceed in accordance with law, but in a limited manner, if there is any order of the appellate authority permitting the authorities concerned to proceed in the light of the directions made therein. In the case of CIT vs. V. Hope Textiles Ltd. 225 ITR 993 (MP) wherein the Hon'ble Madhya Pradesh High Court has held that while appellate authority remanding the case can give directions and lay down limit for the enquiry to be made by the lower Court. When such a direction is made and limits are laid down, the power and jurisdiction of the lower Court to deal with the case, after remand, depend on the specifications of the remand order and the lower Court has no jurisdiction to enter into any question which falls outside this limit. Similar issue has been laid down in the case of CIT vs. Lal Chand Agarwal 259 ITR 497 (Raj.) by the Hon'ble Rajasthan High Court and also by the Hon'ble Allahabad High Court in the case of S. P. Kochar (supra). In our opinion, the AO has to confine himself only to those issues as are remanded in the order and not beyond that otherwise it would be amounting to dealing with the issues which are afresh which is a clear cut violation of the remand order. Consequently ground no. 1 and 2 are allowed.

11. The assessee has also made without prejudice submissions on merits and we find that the assessee has a very strong case on merits as well. In revised ground No. 3 that the assessee has assailed the addition of Rs. 153,66,693/-. The facts are that :- "Krishi Bikash" is one of the Proprietary concerns of the Assessee. The Assessee had claimed deduction of interest expenses of Rs.1,53,66,693/- on loan taken availed from ICICI Bank. The AO on scrutiny of the Bank statement and corresponding ledger A/C in the books of "Krishi Bikash" found that there was no such interest expenditure booked either by the Bank or by the Assessee in his books of accounts. The AO issued a show cause notice calling upon the Assessee to show cause to why the expenditure claimed as deduction should not be disallowed. The Assessee in reply to the said show cause notice submitted that while the claim of interest expense of

Rs.1,53,66,693 is correct but has been wrongly shown as payable to ICICI Bank. It was actually payable to the following three parties, viz.,

1. ICICI Bank	Rs.42,20,407/-
2. Dakshin Damodar Cold Storage Pvt.Ltd.(DDCS)	Rs.55,00,000/-
3. Dakshin Damodar rice Mills Pvt. Ltd.(DDRM)	Rs.56,46,286/-

The Assessee submitted ledger Folio of the above parties along with Bank statement of ICICI Bank.

11.1. In so far as interest payment to ICICI Bank is concerned, the Assessee submitted that loan account No. 000405032054 was adjusted with the proceeds of FD and interest on loan amounting to Rs.42,20,407/-.

11.2. In so far as interest payable to ICICI Bank is concerned, the AO disallowed the claim of the Assessee on the ground that the bank statement produced did not show any interest charges levied by the Bank.

11.3. In so far as interest payable to DDCS is concerned, the Assessee submitted that the it had made payments of interest amounting to Rs.55,00,000/- to the said following sister concerns:

Date	Bank	Payment	Remark
20-07-2006	ICICI Bank A/c No:740	5,00,000/-	Paid to M/s. Dakshin Damodar Cold Storage (P) Ltd
03-10-2006	Andhra Bank -41	30,00,000/-	Paid to M/s. Damodar Builders on behalf of M/s. Dakshin Damodar Cold Storage Pvt Ltd
25-10-2006	Bank of Maharashtra-59	20,00,000/-	
Total		55,00,000/-	

A sum of Rs.5,00,000/- was paid to M/s. Dakshin Damodar Cold Storage (P) Ltd on 20.07.2006 through ICICI Bank A/c. Further, M/s. Damodar Builders had executed

civil construction work for M/s. Dakshin Damodar Cold Storage (P) Ltd during the Financial Year and a sum of Rs.30,00,000/- was outstanding to M/s. Damodar Builders by M/s. Dakshin Damodar Cold Storage (P) Ltd against the said construction work. M/s. Dakshin Damodar Cold Storage (P) Ltd instructed the assessee to make payment of Rs.30,00,000/- to M/s. Damodar Builders directly. Hence, a sum of Rs.30,00,000/- was paid to M/s. Damodar Builders on behalf of M/s. Dakshin Damodar Cold Storage (P) Ltd. On 25.10.2006 a sum of Rs.20,00,000/- was paid to M/s. Dakshin Damodar Cold Storage (P) Ltd. The ledger of the loan was given to the AO.

11.5. The AO did not accept the reply of the Assessee on the ground that the Bank Statement of Andhra Bank did not show any payment of Rs.30,00,000/- to DDCS. Similarly for the payment made on 25.10.2006, he held that the Bank statement did not show any payment. There was no comment on the remaining sum of Rs.5,00,000/-.

In so far as payment made to DDRM is concerned, the Assessee paid interest amounting to Rs.56,46,286/- as detailed below:-

21-02-2007	Bank of Maharashtra -59	20,00,000/-	Paid to M/s. Jalaram Cold Storage on behalf of M/s. Dakshin Damodar Rice Mill Pvt Ltd
25.03.2007	Payment of Interest Adjusted with Sale proceeds receivable	36,46,286/-	
	Total	56,46,286/-	

M/s. Dakshin Damodar Rice Mill Pvt Ltd. was sundry debtor of M/s. Jalaram Cold Storage. Hence, as per the instruction of M/s. Dakshin Damodar Rice Mill (P) Ltd, a sum of Rs.20,00,000/- was paid to M/s. Jalaram Cold Storage on behalf of M/s. Dakshin Damodar Rice Mill (P) Ltd on 21-02-2007. Further, M/s. Krishi Bikash had sold paddy to M/s. Dakshin Damodar Rice Mill (P) Ltd and a sum of Rs.36,46,286/-

was receivable from the said party. Hence, the interest payable on the loan taken from M/s. Dakshin Damodar Rice Mill (P) Ltd was adjusted against the sale proceeds receivable from the said party on 25.03.2007. The ledger of M/s. Dakshin Damodar Rice Mill (P) Ltd in the books of M/s. Krishi Bikash was also filed. The AO did not accept the plea of the Assessee. He did not pass any comment on the payment of Rs.20 lacs by cheque to M/S.Jalaram Cold storage. With regard to adjustment of Rs.36,46,286/- towards sale of paddy, the Assessee filed ledger copy showing entries of sale, but the AO did not accept the plea of the Assessee on the ground that sale bills were not produced in support of sale of paddy. Thus the entire sum of Rs. 1,53,66,693/- was added to the total income of the Assessee. The CIT(A) confirmed the order of the AO. In so far as interest payable to ICICI Bank is concerned, the fact that the account in question was a loan account is admitted but the AO did not believe the claim of the Assessee on the ground that the interest payments are not reflected in the bank statement. The claim of the Assessee ought to have been accepted on the basis that bank would charge interest on the loans given to the assessee. The ICICI bank account No. 000405032054 was loan account. The bank liquidated the FD and adjusted the interest amounting to Rs.42,20,407/- with the proceeds of the FD. The statement of the loan account is attached herewith & marked Annexure -1.

11.6. With regard to payment of interest to the tune of Rs.55,00,000 to DDCS, the AO did not dispute payments of Rs.5 lacs and Rs.20 lacs through cheques but commented only on the payment of a sum of Rs.30,00,000/- not having been paid to DDCS but to one M/s. Damodar Builders. The submissions of the Assessee that the said payment made to M/S.Damodar Builders was in adjustment of dues payable by M/s. Dakshin Damodar Cold Storage (P) Ltd. to M/S.Damodar Builders was neither disputed or doubted. In such circumstances, the claim of the Assessee ought to be allowed. The ledger of the loan is attached & marked Annexure-2. In respect of the interest paid M/s. Dakshin Damodar Rice Mill (P) Ltd, the AO made no adverse comments on payments to M/S.Jalaram Cold Storage. He did not even dispute that the said payment was in adjustment of dues by DDRM to M/S.Jalaram Cold Storage and in discharge of

that liability of DDRM. In respect of adjustment of a sum of Rs.36,46,286/- on account of sale of paddy towards interest payable to DDRM, the AO has not disputed such contract between DDRM and M/S.DDRM but merely disputed the transaction for want of sale bills, without making any independent verification from DDRM. The said addition is bad in law and deserved to be deleted in toto. The ledger of M/s. Dakshin Damodar Rice Mill (P) Ltd in the books of M/s. Krishi Bikash is attached & marked Annexure -3. Thus even on merit this addition is not sustainable and has to be deleted.

11.7. In so far as revised Ground No.4 raised by the Assessee is concerned, the same relates to addition of Rs.4,09,21,440/- on the ground that in the Balance sheet, the Assessee had shown Rs.20,45,65,267/- as payable to DDCS, while DDCS has shown in their Balance sheet only a sum of Rs.16,36,43,847/- as payable by Assessee. The difference between the aforesaid two figures was added as unexplained payment. The said addition was also confirmed by the CIT(A).

11.8. We note that the unsecured loan borrowed from M/s. Dakshin Damodar Cold Storage (P) Limited by the assessee was Rs.20,59,85,725/- as on 01-04-2006. Due to inadvertent mistake in the accounts certain transactions were omitted in the FY 2006-07 and was rectified by the auditors. Further, it is apparent from the balance sheet of the assessee that the actual loan as on 31.03.2006 is Rs.20,59,85,725/-. The assessee, during the year, received further loan of Rs.3,60,06,976 /- from M/s. Dakshin Damodar Cold Storage (P) Ltd and refunded a sum of Rs.3,74,27,434/-. As such, the closing balance as on 31.03.2007 (after receipt & payment) was Rs.20,45,65,267/-. Copy of the ledger of M/s. Dakshin Damodar Cold Storage (P) Ltd in the books of the assessee is given at Page No.54 & copy of the bank statement is at 56-74 of the PB. In view of the facts narrated in the preceding paragraphs, the addition on this count made by the AO and confirmed by the CIT(A) is also unjustified and has to be deleted.

11.9. In so far as Revised Grd.No.5 is concerned, the facts are that in the Assessment Order dated 24.09.2021, the AO [vide point 10 at page 9] made addition of a sum of Rs.1,38,87,859/- by holding as under:

“10. As stated in the show cause notice, the interest earned of Rs. 1,38,87,859/- has been added to the total income of the assessee as the ITAT has not adjudicated the issue and therefore, this issue has not been adjudicated. Hence, the addition made by the Ld. CIT(A) is hereby sustained.”

11.10. The same was confirmed by the CIT(A). We note that the Assessee earned interest income of Rs.1,42,89,459/- but disclosed only Rs.4,01,600/- in the P/L account. Hence the AO made the addition of the difference of Rs.1,38,87,859/- to the income of the assessee. We further observe that in the revised statement of account, the assessee declared interest income of Rs.1,30,26,014/- as under:

Bank Interest shown in the books of Sk Abdul Sabir	:	Rs.1,30,20,466/-
Bank Interest shown in the books of M/s. Raihana Enterprise	:	Rs. 2,774/-
Bank Interest shown in the books of M/s. Narayanpur Agro Tech:	:	Rs. 2,774/-
Total	:	Rs.1,30,26,014/-

So the addition to the extent of Rs.1,30,26,014/- is unjustified as the same is addition of the same amount twice. It was further noted by us that the interest amounting to Rs.12,60,671/- was receivable by M/s. Krishi Bikash on its Fixed Deposits with the ICICI Bank. However, the bank adjusted the interest with the interest chargeable on the loans taken from the said bank. Hence, the assessee didn't claim any interest expenditure incurred in respect of the loan and also didn't offer any interest income. So even considering these facts the issues raised in ground no. 3 of the assessee are to be allowed.

ITA No. 311/Kol/2023 for AY 2008-09.

12. Issue raised in ground nos. 1 and 2 are similar to one as decided by us in ITA No. 310/Kol/2023 for AY 2007-08 wherein we have allowed the appeal of the assessee

by holding that the AO has gone beyond the scope of remanded issue and accordingly the additions were made. In the present case ITAT in its order dated 25.09.2019 restore the issue back to the file of AO. The relevant paragraph is reproduced as under:

“3. We find no reason to sustain the above stated additions of the so-called embezzled funds added by way of enhancement in the CIT(A)’s order under challenge. He has himself made it clear that the assessee and his private limited companies (supra) had raised the ICICI Bank loans in question. That being the case, it can be very well inferred that the same are not unexplained cash credits. There is also no material on record in the CIT(A)’s corresponding discussion that the said loan liability has been a subject-matter of remission or cessation u/s. 41(1) of the Act. So is the case with the assessee’s fixed deposits and interest finance charges which prima facie have a nexus with the loan amounts only. Faced with this factual position, we direct the Assessing Officer to treat the assessee’s loan fund amounts raised in his name or in case of the private limited concerns (supra) as duly explained and grant telescoping benefit to him regarding source of his fixed deposits as well as interest / finance charges. He shall then reexamine this entire inter connected issue as per law within three effective opportunities of hearing. This interconnected issue is taken as accepted for statistical purposes.”

A perusal of the above para 11 of the tribunal order demonstrates that the issues on which the additions were made by the AO were not subject matter of the remand proceedings by the Tribunal and therefore, we are inclined to delete the addition made by the AO as without jurisdiction. Consequently ground no. 1 and 2 are allowed.

13. In the result, both the appeals of the assessee are allowed.

Order is pronounced in the open court on 23rd July, 2024

Sd/-

Sd/-

(Rajpal Yadav /राजपाल यादव)
Vice-President/उपाध्यक्ष

(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 23rd July, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Seikh Abdul Sabir, Golahat Nimtala Masjid, Sripally, Burdwan-713103
2. Respondent – Ld. CIT(A)-Burdwan
3. Ld. CIT(A)- NFAC, Delhi
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata