

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, KOLKATA

डॉ. मनीष बोरड, लेखा सदस्य

के समक्ष

Before

Dr. Manish Borad, Accountant Member

I.T.A. No.978/KOL/2024

Assessment Year: 2016-17

Gokul Nirman Pvt. Ltd.
(PAN: AADCG3523G)

.... Appellant

Vs.

Income tax Officer, Ward-2(2), Kolkata

.... Respondent

Appearances by:

Shri S. Jhajaria, AR appeared for Appellant.

Shri P. P. Barman, Addl. CIT, DR appeared for Respondent.

Date of concluding the hearing : 16.07.2024

Date of pronouncing the order : 23.07.2024

ORDER

This appeal filed by the assessee pertaining to the Assessment Year (in short “AY”) 2016-17 is directed against the order passed u/s 250 of the Income Tax Act, 1961 in short the “Act”) by Ld. Commissioner of Income-tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi [in short Ld. “CIT(A)”] dated 08.04.2024 arising out of the assessment order u/s 143(3) of the Act by ITO, Ward-2(2) Kolkata dated 21.12.2018.

2. The only grievance of the assessee is that Ld. CIT(A) erred in confirming the action of the AO making the addition of Rs.47,30,273/- for notional interest Income earned on interest free loans and advances given.

3. At the outset, Ld. Counsel for the assessee submitted that Ld. AO made the impugned addition referring to the provisions of Companies Act, 2013 which has no bearing on the Income Tax Act. Ld. AO has referred to the provisions of the Companies Act observing that the assessee company cannot give loan at lower rate than the prevailing yield of government securities and further on observing that there being no rationale providing interest free loan of almost 81% of the total value of assets, applied the rate of 7% and calculated the interest @ 7% on the interest free loans standing in the Balance Sheet calculating the impugned addition. He further submitted that assessee has not taken any borrowings and the investment in loans and advances is out of share capital and reserve of the assessee company and, therefore, no addition for notional interest is called for.

4. On the other hand, the Ld. DR Vehemently supported the orders of the lower authorities.

5. I have heard both the parties and perused the material available on record. The assessee is a private limited company and declared NIL income for AY 2016-17 on 17.10.2016. After the case being selected for limited scrutiny followed by servicing of valid notices, ld. AO observed that there are interest free loan given by the assessee. Referring to the provisions of the Companies Act, 2013 Ld. AO applied the average rate of 7% applicable to on government securities and calculated the interest based on the number of days. Ld. CIT(A) has also confirmed the action of the AO observing that no evidence in respect of huge amount of loan given has been brought on record

in respect of commercial expediency. On perusal of the audited Balance Sheet I observe that as on the date of closing of the preceding year there was interest free advance of Rs. 7.20 Cr. standing in the books and the same reduced to 6.70 Cr. during the year. I also observe that the total of shareholder fund comprises of share capital and reserve surplus of Rs.8,22,91,440/- as on 31.03.2015 and of Rs.8,22,66,836/- on 31.03.2006. Further, there are no borrowings except small current liability of Rs.3500/- at the year end. I find that assessee has given long term loans and advances out of interest free funds available with it.

6. Firstly, the loans given in the preceding year has been accepted by the revenue authorities and in this year part of the loans have been refunded back. The impugned addition of notional interest is firstly uncalled for because Ld. AO has merely referred to the Companies Act which certainly has no bearing on the computation of income under the Income Tax Act. Secondly, the Ld. AO may have raised issue of commercial expediency which Ld. CIT(A) referred, but that ground also do not fit for making the impugned addition because assessee has not borrowed any funds and, therefore, has not claimed any interest expenditure during the year. Assessee's own funds have only been applied for giving loans and advances.

7. Therefore, since the alleged loans have been given for commercial expediency and that too out of the interest free funds owned by the assessee, there is no justification in the action of the lower authorities making addition of notional interest in the

hands of the assessee. Thus, finding of the Ld. CIT(A) is set aside and impugned addition of Rs.47,30,273/- made towards notional interest on interest free loans and advances is hereby deleted. Appeal of the assessee is allowed.

8. In the result, appeal of the assessee is allowed.

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

Sd/-

[Dr. Manish Borad]
Accountant Member

Dated: 23rd July,2024

J.D. Sr. PS.

Copy of the order forwarded to:

1. Appellant – **Gokul Nirman Pvt. Ltd., C/o Salarpuria Jajodia & Co. 7, C.R. Avenue, 3rd Floor, Kolkata-700072. .**
2. Respondent – ITO, Ward-2(2), Kolkata
3. CIT(A), NFAC, Delhi
4. CIT-
5. Departmental Representative
6. Guard File.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata