

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA

श्री संजय शर्मा, न्यायिक सदस्य
एवं
श्री संजय अवरुथी, लेखा सदस्य
के समक्ष
Before

SRI SONJOY SARMA, JUDICIAL MEMBER
&
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No.: 720/KOL/2024
Assessment Year: 2016-17

Raj Kumar Baheti.....*Appellant*
[PAN: AEAPB 6570 N]

Vs.

ITO, Ward-45(1), Kolkata.....*Respondent*

Appearances:

Assessee represented by: *Ashish Rastogi, AR.*

Department represented by: *Sanjay Paul, Addl. CIT.*

Date of concluding the hearing : July 2nd, 2024

Date of pronouncing the order : August 5th, 2024

ORDER

Per Sanjay Awasthi, Accountant Member:

In this case the appellant filed his return of income on 30.09.2016 declaring total income of Rs. 2,16,200/-. The Assessing Officer (hereinafter referred to as ld. 'AO') made additions under several heads, some of the important ones being of Rs. 54,549/- added by way of unrealized interest-free advances given to relatives and Rs. 10,22,946/- being interest paid on loans received from relatives. Both these additions have been made u/s 40A(2)(b) of the Income Tax Act, 1961 (in short the 'Act'). A third addition has been made u/s 14A of the Act to the tune of Rs. 28,635/-. For the addition on account of interest income of Rs. 54,549/- was made by estimating notional interest

receivable at the rate of 12% on an amount of Rs. 4,54,573/-. Also, the disallowance of Rs. 10,22,946/- has been made on account of interest-bearing loans taken from close relatives at the rate of 12%. It will be seen later that the appellant has contested the rate of interest from the audited accounts filed before the authorities below at being 9% instead of 12% claimed. The third significant addition has been made on account of disallowance u/s 14A of the Act for earning dividend income to the tune of Rs. 4,45,252/- which is exempt u/s 10(34)/10(38) of the Act. Some other additions have also been made but are not discussed since they are not part of the present proceedings.

1.1. Aggrieved with the action of the AO, the assessee approached the Commissioner of Income Tax (Appeals)-12, Mumbai [hereinafter referred to as Id. 'CIT(A)'] who confirmed the additions on the three issues discussed above, albeit holding in addition to the finding of the Id. AO that the loans given and loans taken on which interest has either been paid or notionally computed as received, were transactions which could not be proved by the assessee. While the action u/s 40A(2)(b) of the Act has been sustained it has been sustained additionally on the ground of non-verification of the loans taken and loans given.

1.2. Aggrieved with this order, the appellant has approached the ITAT through the following grounds of appeal:

“1. That on the facts and in the circumstances of the case the order of the Ld. C.I.T.(A)-12, Mumbai, vide DIN & ORDER NO: ITBA/ALP/S/250/2023-24/1061829880(1) is bad in law arbitrary and without making any proper justification of the facts.

2. That on the facts and in the circumstances of the case, the addition of Rs. 54,549/ on account of undisclosed interest income is totally unjustified.

3. That on the facts and on the circumstances of the case, the disallowances of interest of Rs. 10,22,946/ u/s 40A(2)(b) is unjustified.

4. That on the facts and in the circumstances of the case, the addition of Rs. 28,635/ disallowed u/s 14A of Income Tax Act, 1961, is without any justification and bad in law.

5. That the appellant craves, leaves, adduce or amend any of the above grounds on or before the date of hearing.”

2. Ld. Counsel for the assessee has filed detailed written submissions which were taken on record and right at the outset the ld. A/R fairly mentioned that ground nos. 1 & 4 were not being pressed. Accordingly, the ground pertaining to disallowance u/s 14A of the Act and the two remaining general ground nos. 1 & 5 are not being adjudicated. On the issue of addition of Rs. 54,549/- it has been stated that the assessee advanced short-term loans to relatives from funds available with him to the tune of Rs. 66,45,825/- and he has also relied on a number of authorities to show that in cases where one's own funds were used then there could not be any addition u/s 40A(2)(b) of the Act. Regarding the addition of Rs. 10,22,946/- he has emphatically asserted that the rate of interest was 9% and not 12% as has been mentioned in the orders of the authorities below. He has taken pains to point out this fact from the tax audit report which was also filed before the authorities below. Ld. A/R has averred that the taking of interest-bearing loan at a rate of 9% was justified considering that the commercial borrowing rate was higher at that point of time. In this way he has assailed the action of the ld. AO in disallowing the entire amount of interest paid u/s 40A(2)(b) of the Act.

2.1. The ld. D/R relied on the orders of authorities below.

3. We have considered the rival submissions and also examined the written submissions along with the orders of the authorities below. It is clear that interest-free loan was given to relatives and also interest-bearing loans have been received from relatives. For an appreciation of the mandate u/s 40A(2)(b) of the Act, it is pertinent to reproduce the said Section:

"40A. (1) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other provision of this Act relating to the computation of income under the head "Profits and gains of business or profession".

(2)(a) Where the assessee incurs any expenditure in respect of which payment has been or is to be made to any person⁹¹referred to in clause (b) of this sub-section, and the [Assessing] Officer is of opinion that such expenditure is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment is made or the legitimate needs of the business or profession of the assessee or the benefit derived by or accruing to him therefrom, so much of the expenditure

as is so considered by him to be excessive or unreasonable shall not be allowed as a deduction :

[Provided that [for an assessment year commencing on or before the 1st day of April, 2016] no disallowance, on account of any expenditure being excessive or unreasonable having regard to the fair market value, shall be made in respect of a specified domestic transaction referred to in section 92BA, if such transaction is at arm's length price as defined in clause (ii) of section 92F.]

(b) The persons referred to in clause (a) are the following, namely :—

(i) where the assessee is an individual any relative of the assessee;

(ii) where the assessee is a company, firm, association of persons or Hindu undivided family any director of the company, partner of the firm, or member of the association or family, or any relative of such director, partner or member;

(iii) any individual who has a substantial interest in the business or profession of the assessee, or any relative of such individual;

(iv) a company, firm, association of persons or Hindu undivided family having a substantial interest in the business or profession of the assessee or any director, partner or member of such company, firm, association or family, or any relative of such director, partner or member [or any other company carrying on business or profession in which the first mentioned company has substantial interest];

(v) a company, firm, association of persons or Hindu undivided family of which a director, partner or member, as the case may be, has a substantial interest in the business or profession of the assessee; or any director, partner or member of such company, firm, association or family or any relative of such director, partner or member;

(vi) any person who carries on a business or profession,—

(A) where the assessee being an individual, or any relative of such assessee, has a substantial interest in the business or profession of that person; or

(B) where the assessee being a company, firm, association of persons or Hindu undivided family, or any director of such company, partner of such firm or member of the association or family, or any relative of such director, partner or member, has a substantial interest in the business or profession of that person.”

3.1. A plain reading of the said Section reveals that it empowers the Assessing Officer to examine the genuineness of interest on loans given and taken to relatives. However, it does not give any specific authority to make

wholesale disallowance merely on the ground that the interest-bearing loans have been taken from relatives. Having said this, it is also clear that once interest-bearing loans have been taken from relatives then in the interest of equity, loans given to relatives free of interest should be treated u/s 40A(2)(b) of the Act appropriately. To decide on appropriateness, it is worthy of note that the interest paid to relatives is at the rate of 9% whereas the AO has estimated the receipt of interest at the rate of 12%. It will meet the ends of justice to restrict the disallowance of notional interest from loan given to relatives at the rate of 9% for ground no. 2. Regarding ground no. 3, it is important to note that the loans have been taken for business purposes and once loan given to relatives is being subjected to notional interest u/s 40A(2)(b) of the Act, it will be in the fitness of things to consider that the loans received from relatives and interest given thereof should be allowed in full.

4. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on 5th August, 2024.

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
[Sanjay Awasthi]
Accountant Member

Dated: 05.08.2024

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Raj Kumar Baheti, 25-C, Shiv Tolla Street, Kolkata, West Bengal, 700007.**
- 2. ITO, Ward-45(1), Kolkata.**
- CIT(A)-12, Mumbai.
- CIT-
- CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata