

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH  
MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER  
ITA No. 4799/MUM/2023  
(A.Y.2014-15)

Mr. Abhishek Ambalal Jain, Flat No. 704 M Wing, 7 <sup>th</sup> Floor, Panchsheel Garden Building, Kandivali (W), Mumbai -400067.	Vs.	ITO, Ward 19(1)(1), Kautilya Bhavan, BKC, Bandra (E), Mumbai-400051.
PAN/GIR No. AECPJ8567R		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Shri Nishit Gandhi.AR
Respondent by	Shri Manoj Kumar Sinha, Sr. DR

सुनवाई की तारीख/Date of Hearing	06.08.2024
घोषणा की तारीख/Date of Pronouncement	12.08.2024

**ORDER**

**PER PAVAN KUMAR GADALE, JM:**

The appeal is filed by the assessee against the order of National Faceless Appeal Centre (NFAC), Delhi / CIT(A) passed u/sec 143(3) and u/sec 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. On the facts and circumstances of the case and in law, the order passed by the Ld. A.O. u/s 143(3) is arbitrary, unjustified and bad-in-law.*
- 2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred by not considering the facts, submission and documents filed by the appellant during appellate proceedings related to unsecured loan taken by the appellant*

*and confirm the addition made by the Ld. A.O. of Rs. 52,44,000/- u/s 68 of the Income Tax Act, 1961 by treating the unsecured loan as unexplained cash credit. The action of the Ld. CIT(A) is bad in law.*

*3. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred by ignoring the fact of the case and confirm the addition made by the Ld. A.O. u/s 68 in respect of proportionate interest expenses claimed u/s 57 of the Income Tax Act, 1961 on loans taken by the appellant.*

*4. The appellant craves leave to add, alter, amend or modify any or all grounds till the disposal of the Appeal.*

2. The brief facts of the case that, the assessee is engaged in the business and has filed the return of income for the A.Y 2014-15 on 29.11.2014 disclosing a total income of Rs. 2,37,647/- and the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny under CASS and notice u/sec 143(2) and u/sec 142(1) of the Act along with questionnaire are issued. In compliance to notice, the Ld.AR of the assessee appeared from time to time, submitted the details. The Assessing Officer (AO) on perusal of the financial statements found that(i) the assessee has obtained unsecured loans of Rs. 55,87,581/- during the F.Y 2013-14 (ii) paid interest on loan of Rs.38,99,047/-and (iii) made credit card payments of Rs. 7,16,664/-. The A.O has called for the details and information to substantiate the details of unsecured loans, interest paid on loans and payments made towards credit card bills. Since the assessee has not complied with the details as called for, the AO has issued a show cause

notice and In compliance the assessee has submitted that, during F.Y.2013-14 the assessee has obtained unsecured loans from two parties i) Rajendra Fab of Rs. 64,000/- and ii) Jagishchand Mangalchand Shah of Rs.51,80,000/-. Since the assessee could not substantiate the ingredients required u/sec 68 of the Act i.e the genuineness, identity and creditworthiness of unsecured loan creditors and the A.O has treated the amount of Rs. 52,44,000/- as unexplained credits u/sec 68 of the Act. And In respect of second disputed issue of interest paid of Rs.38,58,169/- ,the AO found that the assessee has paid the interest at different rates on unsecured loans aggregating to Rs.2,45,23,236/- and whereas the assessee has received the interest amount of Rs.30,58,402/- on the unsecured loans and advances of Rs. 4,40,73,412/- where the interest income is received in the range of 6% to 12% pa. Whereas the AO find that the assessee has received the interest on loans at lower rate and has paid higher interest rate range between 15% to 21%pa, hence the AO considering the facts has made proportionate disallowance of excess interest paid of Rs. 28,26,529/- and assessed the total income of Rs.83,08,180/- and passed the order u/sec 143(3) of the Act dated 28.12.2016.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the AO but confirmed the action of the AO and

dismissed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the additions made by the AO overlooking the facts and submissions in the assessment proceedings. Further the Ld. AR submitted that the assessee has filed in the appellate proceedings, the details of unsecured loans supported by the loan confirmations, bank statements and income tax particulars of the unsecured loan creditors and they were not considered by the CIT(A). The Ld. AR submitted that, the CIT(A) has erred in sustaining the disallowance of proportionate interest expenditure claim overlooking the facts that the assessee has paid interest on the opening balances of unsecured loans obtained in the earlier years and the Ld. AR supported the submissions with the factual paper book and judicial decisions and prayed for allowing the assessee appeal. Per Contra, the Ld. DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. The Ld. AR on the first disputed issue of addition u/sec 68 of the Act in respect of unsecured loans obtained in the F.Y 2013-14 envisaged that the CIT(A) has erred in sustaining the addition of unsecured loans u/sec 68 of the Act pertaining to (i) Mr. Jagishchand Mangalchand Shah of Rs. 51,80,000/- and (ii) Rajendra Fab

of Rs. 64,0000/-. The Ld. AR submitted that the assessee due to some personal problems could not file the information before the assessing authorities and the same was filed before the CIT(A) in the Appellate proceedings.. The Ld AR demonstrated the submissions made on unsecured loan transactions duly supported with the loan confirmation, bank statements, ledger accounts, income tax particulars of loan creditors at page 22 to 94 of the paper book and the identity, genuineness and creditworthiness cannot be doubted. Further the Ld.AR highlighted that, in the appellate proceedings the assessee has filed an application under rule 46A of the Income Tax rules 1962 for admission of additional evidence placed at page101&102 of the paper book and the same was overlooked by the CIT(A). Therefore the Ld.AR prayed for an opportunity before lower authorities to substantiate with the material evidences supporting the unsecured loans obtained. We considering the facts, circumstances and additional evidences, the assessee should not suffer for non filing of material information, as the evidences played vital role in decision making. Accordingly, to meet the ends of justice, we set aside the order of the CIT(A) on this disputed issue and restore the issues along with the evidences to the file of the assessing officer to examine and verify the details and decide afresh on merits and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information.

And we allow these grounds of appeal of the assessee for statistical purposes.

6. On the Second disputed issue, the Ld.AR submitted that the CIT(A) has erred in sustaining the proportionate interest expenditure disallowed by the A.O overlooking the facts that the assessee has paid interest on the opening balances of unsecured loans obtained in the earlier years. Whereas the assessee has been paying the interest on the unsecured loans in the earlier and subsequent years subject to TDS provisions and the revenue has been accepting the assessee's claim and the genuineness of interest payments was not doubted. Whereas the interest rate varies based on the terms, conditions and immediate availability of loan funds. The assessee has received interest on unsecured loans and advances provided to the parties and same was offered for taxation and similarly claimed the interest payments made to other parties. Therefore, the action of the AO in treating the differential interest rate cannot be basis without any comparable case. Further the opening balances of loan transactions are not doubted and the revenue has accepted the system of accounting in the earlier and subsequent years and the said interest expenditure was incurred wholly and exclusively for the purpose of business. Therefore the action of the Assessing Officer in making addition/disallowance of proportionate differential interest is not tenable and accordingly, we set aside the

order of the CIT(A) on this disputed issue and direct the Assessing Officer to delete the disallowance and we allow this ground of appeal in favour of the assessee.

7. In the result the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 12.08.2024

Sd/-  
**(GIRISH AGRAWAL)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 12/08/2024

KRK

**Copy of the Order forwarded to:**

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,  
(Dy./Asstt. Registrar)ITAT,  
Mumbai