

**| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"K (SMC)" BENCH, MUMBAI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER**  
**&**  
**SHRI SUNIL KUMAR SINGH, HON'BLE JUDICIAL MEMBER**

**I.T.A. No. 2471/Mum/2024**  
**Assessment Year: 2016-17**

<b>M A LAKHANI</b> 7, 2 <sup>nd</sup> Floor Chandrakant Smruti Shiv Mandir Road Dombivili East Thane - 421201 <b>[PAN: AAPFM6778G]</b>	Vs	<b>Income Tax Officer, Ward-3(2),</b> <b>Rani Mansion Kalyan</b>
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>

Assessee by :	Shri Suchek Anchaliya, A/R
Revenue by :	Shri Uodal Raj Singh, Sr. D/R

सुनवाई की तारीख/**Date of Hearing** : 26/08/2024  
घोषणा की तारीख/**Date of Pronouncement** : 28/08/2024

**आदेश/ORDER**

**PER NARENDRA KUMAR BILLAIYA, AM :**

This appeal by the assessee is preferred against the order dated 28/03/2024 by Id. Commissioner of Income tax, Appeal, Addl./JCIT(A)-1, Kolkata [in short 'Id. CIT(A)], pertaining to AY 2016-17.

2. The grievance of the assessee is two-fold. Firstly, the assessee is aggrieved by the addition of Rs.17,00,000/- made by the AO u/s 68 of the Act and second the grievance relates to the addition of Rs.6,38,527/- u/s 40(a)(ia) of the Act on payment without TDS.

3. Briefly stated the facts of the assessee are that during the course of the scrutiny assessment proceedings, the AO noticed that the assessee had shown outstanding unsecured loan of Rs.17,00,000/- which it claimed to have brought forward from AY 2014-15. The AO was of the

firm belief that there is no outstanding liability and the impugned unsecured loan is a fresh loan of Rs.17,00,000/- and made addition u/s 68 of the Act.

3.1. Proceeding further, the AO noticed that the assessee has claimed interest payment of Rs.6,38,527/- but has not deducted tax at source, therefore, invoking the provisions of Section 40(a)(ia) of the Act, the AO made the addition of Rs.6,38,527/-.

4. Assessee carried the matter before the Id. CIT(A) but without any success.

5. Before us, the Id. Counsel for the assessee drew our attention to the copy of confirmation of M/s. A C Lakhani and pointed out that the impugned loan is coming from F.Y. 2013-14 and since it is an opening balance, the same cannot be added u/s 68 of the Act during the year under consideration.

5.1. Insofar as, the payment of interest is concerned the Id. Counsel pointed out that a certificate has been furnished as per first proviso to sub-Section (1) to Section 201 of the Act certifying that the payees have returned the interest income of Rs.4,57,704/- in its return of income for the year under consideration and, therefore, to that extent no addition should be made.

The Id. D/R strongly supported the findings of the AO and stated that no such certificate was submitted before the lower authorities.

6. We have carefully perused the orders of the authorities below and have considered the relevant documentary evidence brought on record in light of Rule 18(6) of the ITAT Rules, 1963.

7. It is true that the borrowing from M/s. A C Lakhani is coming from earlier AYs as is evident from copy of confirmation of accounts placed at pages 20 to 24 of the paper book. Since the impugned borrowing is coming from earlier AYs, the same cannot be added u/s 68 of the Act during the year under consideration. The AO is directed to delete the addition of Rs.17,00,000/-. Accordingly, the first ground of the assessee is allowed.

8. Insofar as the disallowance of interest is concerned, we find that a certificate from a chartered accountant is placed at page 31 & 32 of the paper book which clearly shows that Total Holding & Finvest Pvt. Ltd. has shown Rs.4,57,704/- has its income in its return of income filed on 06/09/2016. We find that the same certificate was uploaded along with other documents/evidence by the assessee as per exhibit 33 & 34 of the paper book. Therefore, to this extent, no addition has to be made. Accordingly, we direct the AO to restrict the disallowance to Rs. 1,80,823/-. The assessee gets part relief on this issue.

9. In the result, appeal of the assessee is partly allowed.

**Order pronounced in the Court on 28<sup>th</sup> August, 2024 at Mumbai.**

*Sd/-*  
(SUNIL KUMAR SINGH)  
JUDICIAL MEMBER

*Sd/-*  
(NARENDRA KUMAR BILLAIYA)  
ACCOUNTANT MEMBER

Mumbai, Dated 28/08/2024

*\*SC S.P.*

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Mumbai