

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.348/Ind/2024
(Assessment Year: 2014-2015)

M/s Chandan Singh Contractor, E-88/33 Basant Kunj, Arera Colony, Bhopal	Vs.	CIT(A) (NFAC), Delhi
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AAFFC8954Q		
Assessee by	Shri Gagan Tiwari, AR	
Revenue by	Shri Ashish Porwal, SR.DR	
Date of Hearing	29.08.2024	
Date of Pronouncement	30.08.2024	

ORDER

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 12.03.2024 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centers,(NFAC) Delhi for the Assessment Year 2014-15.

2. Assessee has raised following grounds of appeal:

- “1. The assessment order passed by learned lower authorities is bad in law and facts.*
- 2. That the assessment order passed is illegal and unlawful.*
- 3. That on the facts and circumstances of the case The learned lower authorities has erred and was not justified in disallowing the claim of Rs 2331674.00 of deduction of interest exp u/s 36(1) (iii) of the Act.*
- 4. That the learned lower authorities were not justified in not allowing proper and meaningful opportunity of being heard. Also the Learned CIT (Appeals), National Faceless E-Appeal Centre, was also not justified in not allowing proper lawful opportunity before confirming the addition. The order has been passed u/s 144 without providing sufficient opportunity. The case may be remanded back to provide fair opportunity.*
- 5. That on the facts and in the circumstances of the case the order of the learned lower authorities are vitiated on several grounds hence the same may kindly be quashed.*
- 6. The appellant craves leave to add, amend, alter, vary and or withdraw any or all the above grounds of appeal.*
- 7. That the above grounds are independent to each other.”*

3. At the time of hearing Ld. AR of the assessee has submitted that the A.O has passed the assessment order ex-parte u/s 144 r.w.s. 147 of the Act and thereby disallowed the claim of interest expenditure u/s 36(1)(iii) of the Act. He has submitted that the assessee duly filed its original return of income on 24.11.2014 declaring total income of Rs.10,35,412/-. He has further submitted that even the assessment u/s 143(3) of the Act was passed by the A.O on 31.08.2016 and this addition has been made by the A.O in

the reassessment proceedings without any new fact or material came to the knowledge of the A.O after the original assessment order u/s 143(3) of the Act was passed. He has further submitted that CIT(A) has also dismissed the appeal of the assessee for non-prosecution without adjudication on merits. Thus, the Ld. AR has pleaded that the impugned order of CIT(A) be set aside and the matter may be remanded to the record of A.O for fresh adjudication after giving one more opportunity of the hearing to the assessee.

4. On the other hand Ld. Departmental Representative has raised no objection if the matter is remanded to the record of A.O for fresh adjudication.

5. We have considered rival submissions as well as the material placed on record. At the outset we note that the original assessment was completed u/s 143(3) of the Act on 31.08.2016 at total income of Rs.11,06,307/- as against the return income of Rs.10,35,412/-. Subsequently the A.O issued notice u/s 148 of the Act on 31.03.2019 to reassess the income of the assessee by making the disallowance of interest u/s 36(1)(iii) of the Act. The

A.O has made the disallowance of Rs.23,31,614/- on the ground that the interest bearing fund has been used by the assessee for advancing interest free loans to his friends and other persons. Prime facie it is manifest that it is a case of change of opinion as nothing new has come to the notice of the A.O after completing the assessment u/s 143(3) of the Act. The assessee challenged the action of the A.O before CIT(A) however, the appeal of the assessee was dismissed for non-prosecution. The CIT(A) has given the details of the notices issued in para 5 as under:

"5. Proceedings before the CIT(appeals):

The appellant was given opportunity by this office to present his case by issuing hearing notices dated 26.02.2021 and 28.02.2014 asking him to furnish the written submissions in support of the grounds of appeal and statement of facts."

5.1 Thus, the first notice was stated to be issued on 26.02.2021 during the covid pandemic period and the second notice was issued after 3 years on 28.02.2024 and thereafter the impugned order was passed on 12.03.2024. Since CIT(A) has dismissed the appeal of the assessee for non-prosecution without deciding the grounds on merits therefore, the impugned order of CIT(A) is not in accordance with the provisions of Section 250(6) of the I.T. Act. Accordingly, in

the facts and circumstances of the case as discussed above the impugned order of CIT(A) is set aside and the matter is remanded to the record of A.O for fresh adjudication.

6. In the result appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 30.08.2024.

Sd/-

(B.M. BIYANI)
Accountant Member

Sd/-

(VIJAY PAL RAO)
Judicial Member

Indore, 30.08.2024
Dev/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore