

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

**Before: Shri T.R. Senthil Kumar, Judicial Member
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA No. 826/Ahd/2024
Assessment Year 2017-18**

Income Tax Officer Ward-3(2)(1), Ahmedabad (Appellant)	Vs	Akshar Technology Vachnamrut, 15 Ashapuri Society, Canal Road, Ghodasar, Ahmedabad, Gujarat 380050 PAN: ABFFA9757N (Respondent)
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**Revenue Represented: Shri Prasad Rao Waghe
Annasaheb, Sr. D.R.
Assessee Represented: Shri Kirit B. Soni, A.R.**

Date of hearing : 29-08-2024
Date of pronouncement : 03-09-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Revenue as against the appellate order dated 26.02.2024 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2017-18.

2. The brief facts of the case is that the assessee is a partnership firm engaged in the trading business of finger print devise. For the Asst. Year 2017-18, the assessee filed its Return of Income on 31-08-2017 declaring total income of Rs.5,22,600/-. The return was selected for scrutiny assessment, the Assessing Officer noticed that there is unsecured loan from five persons totaling to Rs.60,50,000/-. The assessee could not prove the identity, genuineness and capacity of the unsecured loans thereby the Ld. A.O. added the unsecured loans u/s. 68 of the Act. The A.O. also found that there were loans and advances to M/s. Mantra Softech Pvt. Ltd. and M/s. E-Secure Electronics Mng. Pvt. Ltd. wherein Partners of the assessee Firm were also the Directors of the respective companies, thereby the A.O. calculated the interest @ 12% charged on the advance of Rs.4,52,95,950/- which works out to Rs.13,58,878/- and added as the income of the assessee and demanded tax thereon.

3. Aggrieved against the assessment order, the assessee filed an appeal before Ld. NFAC wherein invoking Rule 46A of the I.T. Rules and filed additional documents. Ld. CIT(A) called for a Remand Report from the Jurisdictional Assessing Officer and deleted the additions made by the Assessing Officer.

4. Aggrieved against the appellate order, the Revenue is in appeal before us raising the following Grounds of Appeal:

(a) The Ld. CIT(A) has erred in law and on facts in deleting the addition on account of unsecured loan u/s. 68 of IT Act of Rs.60,50,000/-.

(b) The Ld. CIT(A) has erred in law and on facts in deleting the addition on account of disallowance of interest on Capital to Partner of Rs.13,58,878/-.

(c) The appellant craves leave to add, alter and/or to amend all or any the ground before the final hearing of the appeal.

5. Ld. Sr. D.R. appearing for the Revenue could not contravert the reply filed by the Assessing Officer to the Remand Report and also unable to substantiate the Grounds of Appeal raised before us with necessary evidences.

6. Per contra Ld. Counsel appearing for the assessee supported the reply filed by the Assessing Officer in the Remand Report and therefore requested to uphold the order of Ld. CIT(A).

7. We have given our thoughtful consideration and perused the materials available on record. On the addition of unsecured loans of Rs.60,50,000/- the finding of Ld. CIT(A) after considering the Remand Report is as follows:

*“7.1.1 All the facts of the case, Grounds of appeal, statement of facts, online submissions of the appellant, the assessment order, remand proceedings and remand report of the AO dated 17.10.2023 are considered carefully. The submission of the appellant and Remand report of the AO are examined. The AO has observed in the remand report mentioning that. "With respect to the issue involved i.e. unsecured loans the assessee, however, during the assessment proceedings could not submit the all required documents i.e. ITR, Confirmation, Bank Statements, P&L A/c and Balance Sheet etc. But, now, **during the remand proceedings, the assessee is submitting these documents for all the persons which are sufficient to establish the identity, creditworthiness and genuineness of the transaction.**" The supporting documents submitted by the appellant relating to unsecured loan amounting to Rs. 60,50,000/- from five loaners **1. Harshad Pandya, 2. Hemen Pandya HUF, 3. Jatin Pandya HUF, 4. Krishnaben Vyas, 5. Madhvi Pandya have been examined and found in order to establish the identity, genuineness and creditworthiness of the same.** In view of the above, addition made by the AO on account of treating unsecured loan of Rs.60,50,000/- as unexplained credit U/s 68 of the IT Act, 1961 is hereby deleted. Thus, the grounds of appeal no. 1 is allowed.”*

8. Similarly on the addition made on account of interest of Rs.13,58,878/- which is held to be trading activity and thereby the Ld. CIT(A) deleted the addition by observing as follows:

"7.2.1 All the facts of the case, Grounds of appeal, statement of facts, online submissions of the appellant, the assessment order, remand proceedings and remand report of the AO dated 17.10.2023 are considered carefully. The submission of the appellant and Remand report of the AO are examined. The AO has observed in the remand report mentioning that,

The assessee further submitted that it had provided confirmation letter for FY 2016-17 from E secure Electronics and Mantra Softech to the assessing officer. It can be seen that the supplier has delivered material up to 25th February 2017 of Rs.6,28,38,300/- and the assessee had made payment to supplier upto 19th December, 2016 of Rs.9,67,49,000/- Thus advance Rs.3,39,10,700/- where was settled in the next year as stated below it can be seen that confirmation letter of Mantra Softech for FY 2016-17 that the assessee had supplied material to the customer upto February 28, 2017 was Rs.6,99,35,250/- and the payment received from the customer up to 30th March, 2017 is Rs.5,25,00,000/- Thus, Rs.1,74,35,250/- is receivable from customer as at 31/03/2017.

4. In the considered opinion of the undersigned, in view of the assessee's submission and contentions, the issue regarding interest disallowance needs to be reconsidered. With regard to the issue of interest disallowance the assessee's claim that it is a trading activity is supported by necessary documents. The assessee has established identity, creditworthiness and genuineness of the transaction by submitting supporting evidences. Therefore, under the facts and circumstances of the case as mentioned above, it is recommended that the submission made by the assessee during the appellate proceedings, may be taken into consideration, if deemed fit."

*The written submission along with supporting documents submitted by the appellant relating to the amount of interest of Rs.13,58,876/- calculated and disallowed by Assessing Officer in assessment order treating as interest free loan/ advance given by the appellant to the above mentioned two companies M/s E secure Electronics and M/s Mantra Softech in the name of purchase/ sales to avoid interest payment, is considered carefully and the claim of the appellant is found in order. **As it is evident from the supporting documents submitted by the appellant that the interest free loan/ advance treated by the AO are actually trading activity of the appellant made in course of his business. The assumption made by the AO in this regard is baseless.** In view of the above, disallowance of the interest on capital to partner for Rs.13,58,878/- made*

by the AO is deleted. Thus, the grounds of appeal no. 2 is allowed. Remaining grounds are general in nature, therefore, not adjudicated separately.”

8.1. Thus we do not any merits in the grounds raised by the Revenue.

9. In the result, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 03-09-2024

Sd/-

(NARENDRA PRASAD SINHA)

ACCOUNTANT MEMBER True Copy

Ahmedabad : Dated 03/09/2024

Sd/-

(T.R. SENTHIL KUMAR)

JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद