

| आयकरअपीलीयअधिकरणन्यायपीठ,मुंबई|
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER

I.T.A. No.2859/Mum/2024
(Assessment Year: 2018-19)

Shilpkars Clothing Co., Flat N.19, Ratnadeep Co-op Hsg Soc, Plot No.37, Road No.17, Chembur, Mumbai-400 071 [PAN: ABLFS1537J]	Vs	The Pr. CIT-27, Mumbai
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Dharmesh Shah a/w Ms. Mitali Parekh
Revenue by :	Shri S. Srinivasu

सुनवाई की तारीख/Date of Hearing : 10.09.2024
घोषणा की तारीख /Date of Pronouncement: 11.09.2024

आदेश/O R D E R

PER NARENDRA KUMAR BILLAIYA, AM

This appeal by the assessee is preferred against the order of the PCIT, Mumbai-27 dated 26.03.2024 framed u/s.263 of the Act.

2. The sum and substance of the grievance of the assessee is that the PCIT erred in assuming jurisdiction u/s.263 of the Act and further, erred in holding that the assessment order dated 21/04/2021 framed

u/s.144 r.w.s.144B of the Act is not only erroneous but also prejudicial to the interest of the revenue.

3. Representatives of both the sides were heard at length. Case records carefully perused and the relevant documentary evidences brought on record duly considered in the light of Rule 18(6) of the ITAT Rules.

4. Briefly stated facts of the case are that the return of income of the assessee was selected for complete scrutiny assessment under the e-assessment scheme 2019 on the following issues:-

(i) Investments / advances / loans

(ii) Business loss and

(iii) Unsecured loans

5. The assessment order framed u/s.144 r.w.s. 144B of the Act and the AO computed the assessed income as under:-

<i>Income from long term capital gains</i>	<i>Rs 5,08,96,216</i>
<i>Income from other sources:</i>	<i>Rs 1,53,181</i>
<i>Total income</i>	<i>Rs 5,10,49,397</i>
<i>Add: Unexplained cash deposits u/s 69A which attracts the tax rates as per the provisions of section 115BBE of the IT Act, 1961</i>	<i>Rs.45,18,700</i>
<i>Add: Unexplained cash credits u/s 68 of the IT Act. 1961</i>	<i>Rs.5,00,24,407</i>

Total taxable income	Rs. 10,55,92,504
Taxable income (Rounded off)	Rs. 10,55,92,500

5. As the order is prejudicial to the interest of the assessee a Show Cause Notice was issued to the assessee on 08/04/2021 providing an opportunity of being heard to assessee. The date of hearing was fixed on 12/04/2021. The assessee has neither furnished any reply objecting the proposed addition/disallowance nor sought for any adjournment in view of the above, there is no other option left other than completing the assessment us 144 of the Act. Hence, this order is being passed u/s 144 rws 1448 of the IT Act, 1961 and the assessment is completed as under

Income from long term capital gains:	Rs 5,08,96,216	
Income from other sources:	Rs 1,53,181	
Total income	Rs 5,10,49,397	
Add Unexplained cash deposits u/s: 69A which attracts the tax rates as per the provisions of section 115BBE of the IT Act. 1961		Rs 45,18,700
Add Unexplained cash credits u/s 68 of the IT Act. 1961		Rs.5,00,24,407
Total taxable income:		Rs.10,55,92,504
Taxable income (Rounded off)		Rs.10,55,92,500

6. Assuming jurisdiction conferred upon him by the provisions of Section 263 of the Act, the PCIT, Mumbai-27 issued a show-cause notice to the assessee. The relevant clause of the notice for our consideration read as under:-

"On perusal of the case records, it is seen that you have debited a sum of Rs 5,24,32,881/- in the P&L Account under the head "interest to others".

However it is seen that during the course of assessment proceedings, you have failed to provide any documentary evidence to prove that the said expenditure has been incurred for the purpose of business. Since you have failed to provide any documentary evidence to prove that the expenses have been incurred by you for the purpose of business inspite of several opportunities provided to you during the course of assessment proceedings, the amount of Rs. 5,24,32,881/- should have been disallowed u/s 37(1) of the IT Act.

3 Therefore, it is considered that the order passed by the Assessing Officer for AY 2018-19 is erroneous in so far as it is prejudicial to the interest of revenue within the meaning of section 263 of the IT Act, 1961.

4 You are therefore, allowed an opportunity of being heard and show-cause as to why an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment within the meaning of section 263 of the IT Act. may not be passed in your case."

7. Assessee filed detailed reply to the show-cause notice and furnished necessary details. After considering the details, the PCIT observed that the assessee had incurred interest expenses of Rs.5,24,32,881/- on secured loans of Rs.29.34 Crores taken from different banks as 'business loan'. As the assessment was completed u/s.144 r.w.s. 144B of the Act, there were no submissions made by the assessee before the AO inspite of several opportunities and the AO was left with no choice but to complete the assessment without verifying the details regarding the nature and allowability of interest expenses. The PCIT concluded as under:-

"8. In view of the above facts and circumstances of the case it is held that the A.O has passed the assessment order u/s 144 rws 144B dated 21.04.2021 without making adequate and complete enquiry and verification which should have been made by him. Hence, the assessment order dated 21.04 2021 passed

u/s 144 rws 144B is erroneous in so far as it is prejudicial to the interest of revenue. Therefore the assessment order dated 21.04.2021 passed by the AO u/s 144 rws 1448 is set aside to the AO with a direction to make a fresh assessment. While completing the fresh assessment the AO shall examine and only verify the issue of whether the loans interest on which have been allowed were for business purpose with the help of documentary evidences and pass a fresh assessment order, in accordance with law and after affording an opportunity of being heard to the assessee.

8. Before us Counsel for the assessee vehemently contended that the AO did not allow the interest expenses claimed by the assessee therefore, there is no question of any further disallowance as per the directions of the PCIT. It is the say of the Counsel that since the AO has not allowed the interest expenditure therefore, to that extent the assessment order cannot be considered as erroneous and prejudicial to the interest of the revenue.

9. Per contra, the DR strongly supported the findings of the PCIT.

10. We have given a thoughtful consideration of the impugned orders. In its computation of income, the assessee has computed the business income at a loss of Rs.5,91,21,299/-. This business loss is the outcome of the profit and loss account for the year ended 31/03/2018 which is as under:-

<i>Particulars</i>	<i>Amount in (Rs.)</i>	<i>Particulars</i>	<i>Amount in (Rs.)</i>
<i>To Opening Stock</i>	<i>178,655,553</i>	<i>By Sales</i>	<i>8,476,955</i>

To Purchases	558,041	By Closing Stock	170,736,639
To Gross Profit a/fd	0		
	<u>179,213,594</u>		<u>179,213,594</u>
To salaries & Wages	1,066,879	By Gross Profit B/fd	
To Staff Welfare Expenses	190,000		
To Electricity Charges	273,645	By Discount	7,875
To Drinking water & Expenses	70,299	By Dividend	15,000
To Telephone Charges	138,653	By Interest on FD Yes Bank	181,903
To Professional fees	23,851	By Written off	367,520
To Advertisement Expenses	3,000		
To Printing & Stationery	11,319		
To Repairs & Maintenance	12,443		
To VAT Paid	296,770		
To General & Miscellaneous Expenses	7,179		
To Other Expenses	5,625		
To Service Tax Paid	46,020		
To Legal Charges	8,000		
To Insurance Charges	7,641		
To Office Expenses	71,415		
To Bank Charges	1,797,454		

To Interest	52,432,881		
To Depreciation	3,230,523		
To Net Profit trf to Cap.A/c	-59,121,299		
Total	<u>572,298</u>		<u>572,298</u>

10. It can be seen from the above P & L account, the assessee has charged its profit by interest expenditure of Rs.5,24,32,881/-. Incidentally, the assessee has also claimed salaries and wages of Rs.10,66,879/- and depreciation of Rs.32,30,523/-. Both these expenses have been specifically disallowed by the AO while computing the assessed income. But the AO has not disallowed the claim of interest of Rs.52,43,288/- as no verification has been done at the same time. The contention of the Counsel that the AO has not allowed the interest expenditure has to be brushed aside knowing the fact that the appeal of the assessee is pending before the CIT(A) against the said assessment order wherein, the assessee has contended that its returned income should be accepted. Once the returned income is accepted, the interest expenditure of Rs.5,24,32,881/- shall be allowed without any verification.

11. Considering the totality of facts of the case in hand, we are of the considered view that the assessment order dated 21/04/2021 framed u/s.144 r.w.s.144B of the Act is not only erroneous but also prejudicial

to the interest of the revenue. We therefore, do not find any reason to interfere with the findings of the PCIT.

12. Appeal of the assessee is accordingly dismissed.

Order pronounced in the Court on 11th September, 2024 at Mumbai.

Sd/-

**(RAHUL CHAUDHARY)
JUDICIAL MEMBER**

Sd/-

**(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER**

Mumbai, Dated: 11/09/2024
Karuna, Sr. Ps.

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. विभागीयप्रतिनिधि , आयकरअपीलीयअधिकरण, मुंबई/DR,ITAT, Mumbai,
6. गार्ड फाई/Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai