

| आयकर अपीलिय अधिकरण न्यायपीठ, 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. 926/Mum/2024
Assessment Year: 2016 -2017

Shri Binoy Rajen Shah 401, Laxmi CHS 17 Vacha Gandhi Road Gamdevi Mumbai - 400004 [PAN: AXAPS6028D]	Vs	CIT(A), NFAC, Delhi
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Amit Jhaveri, A/R
Revenue by :	Shri Ajay Kumar Singh, Sr. D/R

सुनवाईकीतारीख/**Date of Hearing** : 17/09/2024
घोषणाकीतारीख/**Date of Pronouncement**: 25/09/2024

आदेश/O R D E R

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order dated 10/05/2023 by NFAC Delhi [in short 'ld. CIT(A)] pertaining to AY 2016-17.

1.1. This appeal is barred by limitation. The assessee through an affidavit has mentioned the reasons for the delay in filing of the appeal which are on record. We have carefully perused the contents of the affidavit and are of the considered view that the assessee was prevented by reasonable and sufficient cause for not filing the appeal within time. Hence, in the interests of justice, the delay is condoned and the appeal is admitted.

2. The grievance of the assessee reads as under:-

“GOA No. 1:- Disallowance u/s 14A for Rs 23,77,284/-

- ❖ *The Ld CIT(A) confirmed the order of the Ld ITO disallowing the interest expense under rule 14A. During the year the assessee had obtained unsecured loan from Mrs Sneha Shah and M/s Sugee Developers and in turn invested the same in his partnership firm M/s Shah Traders and M/s BnM Fincorp (previously known as M/s BnM Realty).*
- ❖ *The Ld CIT(A) failed to understand that as per the partnership deed no interest was provided to be paid to the partners for capital contribution and hence no interest was paid to the assessee.*
- ❖ *The Ld CIT(A) failed to understand that has paid interest on the borrowed fund but in return the assessee has earned income in way of remuneration and share of profit from the firms. The remuneration is fully taxable in the hands of the assessee and though the share of profit is exempt in the hands of the assessee but the firms have already paid taxes on the same.*
- ❖ *The Ld CIT(A) failed to understand that the salary received from the firm is totally dependent on earning capacity of the fund. During the current year assessee has received remuneration from Shah Traders worth Rs 2,23,87,833/- only because the firm made more profits during the year. And the reason for better financial performance was due to capital infusion from the partner. The Ld CIT(A) erred in stating that the remuneration received is in the form of salary and the same cannot be linked to the loan given to the firm.*

GOA No. 2:- Addition u/s 68 of Rs 53,377/-

- ❖ *The Ld. CIT(A) not considered the facts that the assessee has already offered the said shares for tax under the head Short Term Capital Gain.*
- ❖ *The Ld. CIT(A) not justified in making addition u/s 68 on the basis of general information received from Kolkata Investigation Directorate. There is no mention of assessee's transaction in the information.*
- ❖ *The Ld. CIT(A) not considered the facts that assessment u/s 143(3) has already been completed by the department.*
- ❖ *The Ld. CIT(A) not considered the fact that the purchase of shares was done online through the stock exchange. The shares are sold via the online platform. Hence the above transactions are made through proper trading channels and payment also been made and received through bank accounts.*
- ❖ *The Ld ITO (NFAC) failed to understand that the trading of shares on the stock market is a open process and any listed securities can be purchased and sold without any restriction. The assessee been a genuine investor has invested in the shares without any connection with the company as alleged in the order.*
- ❖ *The Id. ITO has not proved the cash trail in specific to prove the S.T.C.G of the assessee is bogus.*
- ❖ *The Ld. CIT(A) not considered the fact that prices of any particular share is not incontrol of the assessee / genuine investor.*

- ❖ *The Ld. CIT(A) not considered the facts that purchases & sale parties are in existence on the date of transactions. The issue and trading of shares of the said company was duly approved by SEBI. Purchase consideration was paid by account payee cheques.*
- ❖ *The sale consideration also received through account payee cheques.*
- ❖ *The Ld. CIT(A) not considered the facts that sale of shares are on-line. Assessee doesn't have direct nexus with buyer. All sales are through NSE/ BSE. The sale of shares was subject to levy of S.T.T.*
- ❖ *The Ld. CIT(A) not considered the facts that prices of shares are neither controlled by assessee nor have any relation with actual working of the company in many case & fluctuation in prices mainly on the basis of rumors & news in media in connection with the future prospect of the company.*
- ❖ *We relied on following judgment of higher forum:*
 - ✓ *V CIT v/s Mukesh Ratilal Marolia (Bombay High Court)*
S.10(38)/69 : Fact that a small amount invested in "penny" stocks gave rise to huge capital gains in a short period does not mean that the transaction is "bogus" if the documentation and evidences cannot be faulted.
 - ✓ *Farrar Marker v/s ITO (ITAT Mumbai)*
S.10(38)/68 : Long- Term capital gains on sale of "penny" stocks cannot be treated as bogus & unexplained cash credit if the documentation is in order & there is no allegation of manipulation by SEBI or the BSE. Denial of right of cross - examination is a fatal flaw which renders the assessment order a nullity.
 - ✓ *ITAT Mumbai, ITO-24(3)(1) V/s Mr. Indravadan Jain (HUF)*

GOA No. 3 Interest u/s 234A, 234B, 234C

- ❖ *The Ld. ITO (NFAC) has levied interest u/s 234A, 234B, 234C of the Income Tax Act 1961 on taxes which has been confirmed by the Ld. CIT(A).*

GOA No. 4 - *We reserve our right to add, amend, alter, rectify, revise, whatever is stated herein above or may be stated herein after."*

3. Briefly stated the facts of the case are that the assessee has electronically filed his return of income on 15/10/2016 declaring total income of Rs.2,74,65,740/-. The return was selected for scrutiny assessment under CASS and accordingly statutory notices were issued and served upon the assessee.

4. The assessee is a partner in M/s BnM Fincorp (previously known as BnM Realty), M/s. KBM Realty, M/s. Shah Traders, M/s. Shiv

Kumar Exports. The AO was of the opinion that since the loans from these entities have been utilized for business purposes, the interest expenditure should also be accounted as business expenditure. However, the assessee has set off the same against income from other sources. The AO observed that the assessee has claimed interest expenditure of Rs. 23,77,284/-. Invoking provisions of Section 14A of the Act, the AO formed a belief that the interest expenditure had been incurred in respect of earning exempt income and disallowed Rs.23,77,284/-.

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

5. Before us, the Id. Counsel for the assessee referring to several decisions of Hon'ble Courts, strongly contended that the remuneration received from M/s. Shah Traders has been taxed as profit and gains under the head Business & Profession and only the profit element has been claimed as exempt from tax whereas interest is paid on borrowed capital utilized as capital contribution in the partnership firm. Therefore, there is no reason to invoke the provisions of Section 14A of the Act.

5.1. Per contra, the Id. D/R strongly supported the findings of the AO.

6. We have given a thoughtful consideration to the orders of the authorities below. There is no dispute that the assessee has taken unsecured loans for introducing capital in the partnership firm. It is also not in dispute that the remuneration received from M/s. Shah Traders

has been offered for taxation under the head profit and gains from business and profession and the share profit from partnership firm has been claimed as exempt from tax. The fact remains that the loans have been taken for a specific purpose, therefore, it is not correct to invoke the provisions of Section 14A r.w.r 8D. Moreover, the share of profit earned from the firm is received after payment of due taxes on the profit by the firm and is exempt in the hands of the partner to avoid double taxation.

7. Considering the facts of the case is totality, we do not find any merit in the impugned disallowance. The AO is directed to delete the addition of Rs. 23,77,284/-. Accordingly, Ground No. 1 is allowed.

8. Ground No. 2 is not emanating from the orders of the authorities below as the same was not raised before the Id. CIT(A). Therefore, the same is not considered.

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

Order pronounced in the Court on 25th September, 2024 at Mumbai.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(NARENDRAKUMARBILLAIYA)
ACCOUNTANTMEMBER

Mumbai, Dated 25/09/2024

**SC S.P.*

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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. संबंधितआयकरआयुक्त/ Concerned Pr. CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)-
5. विभागीयप्रतिनिधि , आयकरअपीलीयअधिकरण, मुंबई/DR,ITAT, Mumbai,
6. गार्डफाई/Guard file.

आदेशानुसार/ BY ORDER,
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Assistant Registrar
आयकरअपीलीयअधिकरण
ITAT, Mumbai