

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.4603/M/2024
Assessment Year: 2020-21**

Surendra Sampatraj Surana 768, Singapore Arcade, 3 rd Road, Khar West, Mumbai - 400052 PAN: AAJPS2563D	Vs.	Dy. Commissioner Of Income Tax (Appeals) -22(1), Circle 22(1), Piramal Chambers, Mumbai - 400012
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Ashwin Dharwe
Revenue by : Shri Bhangapatil P.Ramesh,Sr.DR

Date of Hearing : 29.10.2024
Date of Pronouncement : 29.10.2024

ORDER

Per : Prabhaskar Shankar, Accountant Member:

The present appeal has been filed by the assessee which emanates from the appellate order passed by the Ld. CIT(A)/National Faceless Appeal Centre (NFAC), Delhi, with regard to the assessment order passed under section 143(3) of the Income Tax Act 1961, (in short 'the Act') for the A.Y. 2020-21.

2. The Assessee has raised following grounds of appeal :

"1. In the facts and circumstances of the case and in law the learned CIT(Appeals) erred in confirmation of the addition of Rs. 71,46,486/- to the total income of the appellant holding the interest received from proprietary, partnership and private limited company where the appellant is substantial stake holder as assessable under sec.56.

2. *In the facts and circumstances of the case and in law the learned CIT(Appeals) erred in not appreciating that the borrowings by the appellant from banks was for the purposes of business of the appellant and hence interest paid was for the purposes of the business and the interest received is from 1. Proprietary business, 2) from partnership business where the appellant has 90% share and 3) A private limited company where more than 75% shares are hold by the appellant.*
3. *In the facts and circumstances of the case and in law the learned CIT(Appeals) erred in not appreciating the fact that the interest received is as reimbursement towards the interest paid by the appellant to the banks.*
4. *In the facts and circumstances of the case and in law the learned CIT(Appeals) erred in not appreciating that the appellant was carrying his business in various forms of business such as proprietary, partnership and Pvt. Ltd. Companies and the borrowings by the appellant is for the purposes of his business and the advances made were for purposes of business.*
5. *In the facts and circumstances of the case and in law the learned CIT(Appeals) erred in not appreciating the fact that the interest received is only incidental to the business of the appellant and not as a return on investment.*
6. *In the facts and circumstances of the case and in law the learned CIT(Appeals) erred in not appreciating the fact that the appellant has within the knowledge of the Assessing Officer and the appellate authorities have adjusted the interest received against interest paid.*
7. *The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal."*

3. According to the assessment order, the assessee received interest of Rs 71,46,486/-which was however, set off against interest paid on loan of Rs 1,50,33,297/-.Interest earned on savings bank account of Rs 24,428/- was shown as Income from Other Sources. The claim was made as business expenditure. The Id.AO disallowed the claim on the ground that the deduction claimed u/s 57 of the Act was not expended for earning Income shown from Other Sources.

3.1 As per Statement of facts, the assessee carried on different businesses in different models such as Proprietary, partnerships and Pvt. limited companies. During the year it borrowed funds from bank and financed the business as and when the funds were required by those entities. In order to arrive at correct profitability of the business, he recovered interest costs from those entities. These recoveries which were

in the nature of recoveries, were adjusted against the interest paid. No part of financing to the business of the assessee was in the nature of capital expenses nor as investments. Since the borrowings were exclusively for the purposes of business and the amounts recovered from the different business were not in the nature of interest on loans, he legitimately adjusted the same against interest paid.

4. The assessee filed appeal before the Id.CIT(A). It appears from perusal of the order that till para 5.3. of the appeal order from pages 1-7 he has discussed the facts of the case and the conclusions drawn by the AO. However, in **Para 6.1** he stated as below:

" Ground No.1 to 9 are raised against passing the ex-parte order and raising a demand of Rs.6,87,732/- on 11th March 2022 by the Asst. Commissioner, CGST and Central Excise Division V, Mumbai South."

4.1 It is further observed by him in **Para 6.1.1** that as per the Form 35, Col No.2, the appeal filed by the appellant is against the assessment order u/s. 143(3) r.w.s. 144B of the IT Act, 1961 dated 21.09.2022 passed by the National Faceless Assessment Centre, Delhi. However, the grounds of appeal raised by the appellant are with regard to order dated 11.03.2022 passed by **the Asst. Commissioner. CGST and Central Excise Division V, Mumbai South**. As seen from the grounds of appeal, the assessee did not raise any ground with regard to the assessment order u/s.143(3) r.w.s. 144B of the IT Act, 1961 dated 21.09.2022. Therefore, the addition made of Rs.74,46,486/- was confirmed and the appeal was dismissed.

5. From perusal of the para 6.1 and 6.1.1, it is evident that the Id.CIT(A) did not consider the issue judiciously and hurried in passing ex parte order in casual manner and without allowing the assessee any opportunity to clarify the matter at all. If he had certain misunderstanding, the assessee should have been given adequate opportunity to clarify the matter and if needed, could have been asked

requested to file revised grounds of appeal and adjudicate on such grounds.

5.1 We consider that in the interest of justice and fair play, the assessee may be accorded one opportunity to explain its case before lower authorities. Moreover, as per the provisions of Section 250(6) of the 1961 Act, Id.CIT(A) is also obligated to state points for determination in appeal before him, the decision thereon and the reasons for determination rather than dismissing the appeal summarily. During the hearing, the Bench proposed for restoration of the matter to the Id.CIT(A) for a de novo consideration. The Revenue did not oppose this plea. Thus, in the interest of justice, we deem it appropriate to allow the appeal for statistical purposes, emphasizing the need for a thorough and compliant adjudication process. The Id. CIT(A) shall give proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice in the remand proceedings for de novo adjudication of the appeal of the assessee filed before him. Needless to state, the assessee would comply with notices and any details sought by the appellate authority in adjudication of its appeal.

6. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 29.10.2024.

**Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER**

**Sd/-
(PRABHASH SHANKAR)
ACCOUNTANT MEMBER**

Poonam Mirashi,
Stenographer

Copy to: The Appellant
The Respondent
The Pr.CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.