

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A": NEW DELHI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 1885/DEL/2024  
[Assessment Year: 2017-18]**

A & A Capital Services Pvt. Ltd., M-55, Terrace Portion, M Block Market, Greater Kailash-2, Delhi-110048.	<u>Vs</u>	Income-tax Officer, Ward-1(1), Delhi.
PAN: AABCA `1051 H		
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>		<b>Shri Sunil Surana, CA</b>
<b>Respondent by</b>		<b>Shri Javed Akhtar, CIT (DR)</b>
<b>Date of hearing</b>		<b>13.11.2024</b>
<b>Date of pronouncement</b>		<b>20.11.2024</b>

**ORDER**

**PER SATBEER SINGH GODARA, JM:**

This assessee's appeal for assessment year 2017-18 arises against National Faceless Appeal Centre (NFAC), Delhi's DIN and order no. ITBA/NFAC/S/250/2023-24/1062191993(1), dated 07.03.2024, in case no. CIT(A), Delhi-1/10671/2019-20, in proceedings u/s 250 of the Income-tax Act, 1961, hereinafter referred to as the 'Act'.

Heard both the parties at length. Case file perused.

2. The assessee pleads the following substantive grounds in the instant appeal:

*“1. For that the Ld CIT(A) erred in confirming the action of the AO in treating the interest of Rs. 5,47,39,150/- paid on loan as unexplained expenditure s 69C when the source of payment was never doubted or disputed by the AO.*

*2. For that the Ld CIT(A) erred in confirming the action of the AO in treating the interest of Rs. 5,47,39,150/- paid on loan as unexplained expenditure 69C by treating the loan taken from Artifice Properties as assesses own funds when all the details and documents were filed to prove the genuineness of the transactions and the loan was repaid back to the party.*

*3. For that the Ld CIT(A) erred in enhancing the income of the appellant by treating the loan of Rs.90.52 crores u/s 69A/69B when the show cause notice of enhancement was with reference to section 69 of the I.T. Act and there were neither any investments which were not recorded in the books of account nor is there any such finding by the CIT(A).*

*4. For that the Ld CIT(A) erred in enhancing the income of the appellant by treating the loan of Rs.90.52 crores u/s 69A/69B when the appellant was neither found to be the owner of any money, bullion, jewellery, or another valuable article, which was not recorded in the books of account of the appellant nor found to have any unrecorded investment in its books of account.*

*5. For that on the facts and circumstances of the case the treatment of loan amount as not genuine by the AO & the CIT(A) was unjustified when no verification was made from the assessment record of the party, the party was Active compliant company as per MCA records and the addition made simply on suspicion and surmises is liable to be deleted.”*

3. We advert to the basic relevant facts. There is hardly any dispute between the parties that the learned assessing authority had framed its section 143(3) regular assessment on 28.12.2019 disallowing assessee's interest expenditure of

Rs. 5,47,39,150/- unexplained u/s 69C on the ground that it had failed to plead and prove any satisfactory explanation in respect of the corresponding loan amount itself to the tune of Rs. 90.52 crores.

4. We next note that the CIT(A)/NFAC's impugned lower appellate discussion in paras 7.2.3 has not only upheld the foregoing assessment findings disallowing/adding interest expenditure but also added the principal loan amount itself of Rs. 90.52 crores as its own money from undisclosed sources u/s 69A/69B of the Act. It is in this factual backdrop that the assessee seeks to reverse the CIT(A)/NFAC's action, both on the interest component disallowed/ added in the assessment and upheld in lower appellate discussion as well as the enhancement qua the principal amount itself, forming subject matter of adjudication before us.

5. There will be hardly any dispute between the parties in principle in this factual backdrop that the learned CIT(A)/NFAC is indeed vested with its jurisdiction to make an enhancement u/s 251(1)(a) of the Act. The Revenue vehemently contends that the impugned enhancement to the extent the assessee's loan amount has been rightly made herein, deserves to be upheld, as the assessing authority had himself doubted genuineness/ creditworthiness thereof during the course of assessment.

6. We have given our thoughtful consideration to the assessee's and Revenue's respective vehement submissions regarding validity of the lower appellate findings herein making section 251(1)(a) enhancement of Rs. 90.52 crores and find no reason to sustain the same. We are of the considered view, in light of CIT v. Shapoorji Pallonji Mistry (1962) 44 ITR 891 (SC); CIT v. Union of India (1999) 240 ITR 556 (Del.); and CIT v. Sardari Lal & Co. (2001) 251 ITR 864 (Delhi) (FB), that although the learned lower appellate authority is indeed vested with enhancement jurisdiction, the same has been held as not extendable to adding a new head of income itself. It is observed, at the cost of repetition, that once the assessment framed in assessee's case had disallowed/ added only its interest expenditure, the corresponding principal sum could not have been taken as subject matter of enhancement, going by the various supportive above stated decisions in assessee's favour and against department. We, accordingly, reverse the learned CIT(A)/NFAC's impugned enhancement of the said principal in very terms.

7. Next comes the sole issue of interest expenditure disallowance/ addition of Rs. 5,47,39,150/- (supra). Learned counsel invited our attention to the Stock Exchange Board of India (SEBI)'s order dated 31.10.2022 that the very interest issue stands adjudicated in assessee's favour and against the department. The Revenue's case, on the other hand, is that this clinching adjudication has come post facto the impugned assessment framed on 28.12.2019, which was neither filed nor

considered in the lower appellate discussion before us. Faced with this situation, we deem it appropriate to restore this latter interest addition/ disallowance issue back to the assessing authority for its fresh factual verification and adjudication, as per law, preferably within three effective opportunities of hearing, subject to a rider that it shall be taxpayer's risk and responsibility to plead and prove all the relevant facts in consequential proceedings. Ordered accordingly.

No other ground/argument has been raised before us.

8. This assessee's appeal is partly allowed in above terms.

Order pronounced in open court on 20.11.2024.

**Sd/-**  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**  
\*MP\*

**Sd/-**  
**(SATBEER SINGH GODARA)**  
**JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI