

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "A" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA No. 4492/Mum/2024
Assessment Year 2019-20

Akshay Anil Jain, 28A, Veena Happy Home Apartments, 5 th Floor, Flat No. 5E, Nepeansea Road, Malabar Hill, Mumbai PAN : ALFPJ9539B	vs.	Income Tax Officer, Ward-23(1)(6), 6 th Floor, Piramal Chamber, Lalbaugh, Mumbai.
(Appellant)		(Respondent)

Assessee by : Shri Prakash Jotwani
Revenue by : Shri Sunil Shinde, Sr.DR

Date of Hearing : 13/11/2024
Date of Pronouncement : 21/11/2024

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order dt.11-07-2024 passed by the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [‘Ld.CIT(A)’] and it relates to AY. 2019-20. The assessee is aggrieved by the decision of the Ld.CIT(A) in partially confirming the order passed by the AO. The issue contested in the appeal is related to the head of income under which the interest income is assessable.

2. The has declared income under the head Salaries, House Property, Business and Other sources. The assessee has borrowed loans

and invested in a Limited Liability Partnership (LLP) companies. It is stated that all of them are related concerns of the assessee. He further noticed that the assessee has declared interest income from these investments under the head 'income from business', while the interest expenses have been claimed under the head 'income from other sources'. He further noticed that the assessee has declared net loss under the head 'income from other sources' and the same was set-off against the salary income. During the course of assessment proceedings, the assessee requested the AO to allow interest expenditure against the interest income declared under the head 'income from business' instead of allowing it under the head 'income from other sources'. The AO accepted the same and accordingly arrived at a business loss of Rs.26,05,631/-. The AO took the view that the above said loss cannot be carried forward as the assessee has not claimed the same in the original return of income. Aggrieved by the above said stand of the AO, the assessee filed an appeal before the Ld.CIT(A).

3. Before the First Appellate Authority (FAA), the assessee changed his stand and prayed that both the interest income and interest expenditure should be considered under the head 'income from other sources'. The Ld.CIT(A) did not accept the above said plea of the assessee. With regard to carry forward of loss, the Ld.CIT(A) agreed with the view taken by the AO. Hence, the assessee has filed this appeal before the Tribunal.

4. The Ld.AR submitted that the assessee is not engaged in money lending business and hence, the interest income earned by the assessee from MAVI GENCARE LLP amounting to Rs.12,41,024/- should have been declared/assessed under the head 'income from other sources' only. But the assessee has wrongly declared the above said income

under the head 'income from business' and also erroneously requested the AO to deduct the interest expenditure against it. He submitted that, as per law, both the items should have been disclosed under the head Income from Other sources only. The Ld.AR further submitted that the AO has got a duty to guide the assessee properly and further, any income is required to be assessed under the correct head of income only. Accordingly, the Ld.AR submitted that both the interest income and expenditure should be directed to be considered under the head 'income from other sources'.

5. The Ld.DR, on the contrary, supported the order passed by the tax authorities.

6. We heard the parties and perused the record. We notice that the only prayer of the assessee in this case is that the interest income and interest expenditure should be considered under the head 'income from other sources'. For that purpose, it is clarified that the assessee is not carrying on money lending business. Since the interest earned on the investments made in LLPs, we agree with the submissions of the assessee that it should be considered under the head 'income from other sources' only. The interest income may be assessed under the head Income from business, only if the assessee is carrying on money lending/financing activity. Since the assessee has borrowed money for the purposes of making investment in LLPs, the interest expenditure is required to be deducted against the above said interest income. Before us, the above said request of the assessee was not shown to be incorrect by the Revenue. Accordingly, we find merit in the above said contentions of the assessee. Accordingly, we set aside the order passed by the Ld.CIT(A) and direct the AO to consider the interest income as

well as the interest expenditure under the head 'income from other sources' and compute the total income in accordance with law.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 21-11-2024

Sd/-
[RAJ KUMAR CHAUHAN]
JUDICIAL MEMBER

Sd/-
[B.R. BASKARAN]
ACCOUNTANT MEMBER

Mumbai,
Dated: 21-11-2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "A" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai