

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, KOLKATA

[Before Shri Rajesh Kumar, AM & Shri Sonjoy Sarma, JM]

I.T.A. No. 291/Kol/2024

Assessment Year: 2018-19

ITO, Ward-9(1), Kolkata	Vs.	Kali Fabrics Pvt. Ltd. Room No. 2B, 3 rd Floor, 11, Clive Row, Kolkata-700 001. (PAN: AABCK4422A)
Appellant		Respondent

Date of conclusion of Hearing	29.10.2024
Date of Pronouncement	27.11.2024
For the Appellant	Shri Miraj D. Shah, AR
For the Respondent	Shri Prakash Nath Barnwal, CIT, DR

ORDER

Per Shri Rajesh Kumar, AM

This appeal filed by the revenue is against the order of Ld. CIT(A), NFAC, Delhi dated 12.10.2023 for AY 2018-19 arising out of assessment order passed u/s. 143(3) r.w.s. 144B of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) by Assessing Officer, National Faceless Assessment Centre, Delhi dated 31.04.2021.

2. The only issue raised by the revenue is against the order of Ld. CIT(A) deleting the addition of Rs.5,18,27,770/- as made by the AO on account of disallowance of interest paid.

3. The facts in brief are that the assessee filed its return of income on 30.10.2018 declaring gross income of Rs.1,44,27,515/- which was selected for complete scrutiny. The AO issued notices u/s. 143(2) and 142(1) of the Act along with questionnaire which was duly replied by the assessee. The AO observed on the basis of evidences filed by the assessee that assessee had paid interest to the tune of Rs.5,18,27,770/- on borrowed money whereas he has not charged any interest on the loan given to various parties and accordingly, show cause notice was given which was not replied by the assessee. The AO thereafter, noted that the assessee is engaged in the business of advancing loans to its customers after taking money on interest whereas no interest was charged on loans in 23

cases which were enumerated in para 6 pages 5, 6 and 7 of the assessment order and finally added the same to the income of the assessee.

3.1. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by observing as under:

“8.6 After careful consideration of material facts, the undisputed position that emerges is that the assessee has paid interest expenses of Rs. 5,18,27,770 and earned interest income of Rs. 6,44,00,279. The loans advanced by the appellant amount to Rs.148,52,52,780 and the loans taken by it amount to Rs. 126,89,66,690. The appellant has not charged interest on loans advanced to 23 odd parties, while interest was charged from other parties. The AO disallowed entire interest expenses of Rs. 5.18 crore, which were made through banking channels after deducting TDS . On the basis of these facts, I am of the considered opinion that the disallowance of entire interest is not sustainable in the eyes of law. No statutory provision has been brought on record by the AO which mandate deletion of interest expenses in the instant case. The assessee had debited the interest expenditure during the year.

8.7 As per the mandate of sec.36(1)(iii), the amount of interest paid in respect of capital borrowed for the purposes of business or profession is an allowable deduction as held by Hon'ble ITAT Chennai in Ranjani Enterprises (P.) Ltd. vs. ITO [2022] 139 taxmann.com 208 (Chennai - Trib.). In the instance case, Ld. AO could have invoked the provisions of sec.36(1) (iii) to hold that the borrowed capital was not used for the purposes of business or profession. However, the same has not been done and the provisions of sec.36(1)(iii) have not been invoked for the simple reason that the entire borrowed capital (loans) were used for advancing loans as a part of business. Rather, the AO has disallowed entire interest expenditure without questioning the genuineness of such expenditure. Therefore, the action of the AO, in disallowing the entire interest expenses on the pretext that interest has not been charged on certain advances, is not in accordance with law and hence not sustainable.

8.8 Another aspect of the matter is that the loans have been granted by the appellant to various entities and earned interest from them to the tune of Rs.6.44 crores, which is more than the interest expenditure of Rs.5.18 crores claimed by the appellant. Interest has not been charged from certain entities in "expectation of gains in future", the fact of which was not questioned by the AO. Therefore, non-charging of interest was fully justified by the appellant and the same could be said to have been out of commercial expediency. In such a scenario the ratio of decision of Hon'ble Supreme Court in the case of S.A. Builders Ltd. (supra) would be applicable wherein it was held that once it was established that there was nexus between the expenditure and purposes of business, deduction u/s 36(1) (iii) was to be allowed. It was further held that the expression 'commercial expediency' is an expression of wide import and includes such expenditure as prudent businessman incurs for the purpose of business. The total expenditure incurred toward interest payment in the instant case was RS.5.18 crores. This expenditure may not have been incurred under any legal obligation but yet it is allowable as a business expenditure if it was incurred on grounds of commercial expediency. This decision in S.A. Builders Ltd. (supra) has subsequently been followed by Hon'ble Supreme Court in Hero Cycles (P.) Ltd. v. CIT [2015] 63 taxmann.com 308/379 ITR 347.

8.9 I find that the ratio of the above decisions is applicable to the facts of the case considering the arguments of the appellant that not charging of interest on loans advanced to certain entities in purely based on business/commercial expediency. Viewed from any angle, the addition as made by the AO is not sustainable. I hold accordingly. The AO is directed to re-compute appellant's income

by deleting the impugned addition. The ground of appeal no. 3 stands allowed in terms of my above decision.”

4. After hearing the rival contentions and perusing the material on record including the appellate order passed by Ld. CIT(A) we observe that the assessee has incurred interest expenses to the tune of Rs.5,18,27,770/- and earned interest income of Rs.6,44,00,279/- during the year. The loans advanced by the assessee were to the tune of Rs.148,52,52,780/- whereas the loans taken by the assessee were Rs.126,89,66,690/-. The assessee has not charged any interest on the loans advanced to 23 parties while the interest was duly charged from the other parties. Ld. CIT(A) noted that not charging of interest from certain entities as noted by the AO is purely commercial and business expediency by relying on the decision of S. A. Builders Ltd. Vs. CIT, Civil Appeal No. 5811 of 2006 and the decision of Hon'ble Apex Court in the case of Hero Cycles Ltd. Vs. CIT [2015] 63 taxmann.com 308/379 ITR 347. Besides, it was also observed by us from the order of the Ld. CIT(A) that assessee's own interest free funds comprising of share capital, reserves and surplus and interest free loans were far more than the interest free loans then the presumption is that interest free loans were advanced out of interest free own funds available with the assessee and consequently no disallowance could be made with respect to interest paid which are relatable to interest free loans. The case of the assessee is squarely covered by the decision of Hon'ble Bombay High Court in CIT Vs. Reliance Utilities & Power Ltd. 313 ITR 340 and CIT Vs. HDFC Bank Ltd. 366 ITR 505. Considering these facts, we find no infirmity in the order of the Ld. CIT(A) and accordingly, the same is affirmed by dismissing the appeal of the revenue.

5. In the result, appeal of the revenue is dismissed.

Order is pronounced in the open court on 27th November, 2024

Sd/-
(Sonjoy Sarma)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Dated: 27th November, 2024

JD, Sr. PS

Copy of the order forwarded to:

1. Appellant– ITO, Ward-9(1), Kolkata
2. Respondent – Kali Fabrics Pvt. Ltd..
3. CIT(A), NFAC, Delhi
4. Pr. CIT
5. DR, ITAT, Kolkata,
True Copy

By Order

Assistant Registrar
ITAT, Kolkata Bench, Kolkata