

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'E': NEW DELHI**

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

AND

SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

**ITA No.6484/Del/2017
[Assessment Year: 2013-14]**

Neminath Industries Pvt. Ltd. C/o-PARM & SMRN, 701, Vikrant Tower, Rajendra Place, New Delhi-110008	Vs	Income Tax Officer, Ward-18(1), C.R. Building, New Delhi
PAN-AAACR3132K		
Assessee		Revenue

Assessee by	Ms. Tanya Shruti, Adv. & Shri Rohit Tiwari, Adv.
Revenue by	Sh. Krishna K. Ramawat, Sr. DR

Date of Hearing	06.12.2024
Date of Pronouncement	06.12.2024

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal filed by the assessee is directed against the order dated 31.08.2017 of the Ld. Commissioner of Income Tax (Appeals)-37, New Delhi, relating to Assessment Year 2013-14 arising out of order u/s 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act') dated 23.06.2016.

2. The grounds of appeal raised by the assessee are as under:-

"That on the facts and in the circumstances of the case and in law the ld.CIT (A) has erred in confirming the disallowance of Rs.47,03,222/-made by the Assessing Officer on account of interest paid on loan taken by the appellant company. The Ld. CIT (A) has erred in not appreciating the fact that the loan was taken in earlier year in the name of the company and credited

in its bank accounts and used for its business purpose. The relevant documents were adduced during the appellate proceedings which have not been considered by the Ld. CIT(A) while confirming the additions made by the AO.”

3. Brief facts of the case:- The assessee is a company and engaged in the business of Trading & Investment. The assessee filed its return of income on 12.08.2014 declaring loss at Rs. (-)2,93,13,258/-. The case was selected for scrutiny through CASS. During the course of assessment proceedings, the AO noted from the note no.9 to the profit & loss account that interest amounting to Rs.47,03,222/- was claimed as interest paid to finance companies. The AO asked the assessee to establish that the said interest paid in respect of loan borrowed amounting to Rs.2,53,36,334/- was for the purpose of the business or profession. The AO further noted that the said loan has been raised in the name of Smt. Chand Jain and not in the name of assessee company. It was explained by the assessee that the said loan was raised by the assessee company in earlier years against the collateral security of the house belonging to Mrs. Chand Jain and the amount of loan was credited in the bank account of the assessee company. It was further stated that after the takeover of the said loan by M/s Religare Ltd., the name of Mrs. Chand Jain was mentioned as borrower but the loan was utilized by the assessee company and not by Mrs. Chand Jain as evidenced from the documents submitted before the AO. However, the AO noted that on the examination of the reply and the documents filed by the assessee that it was silent on the aspect that the loan was utilized for the purpose of business. The AO therefore held that the reply of the assessee fails on both the conditions laid down in section

36(1)(iii) of the Act and disallowed the interest of Rs.47,03,222/- and added to the total income of the assessee.

4. Against the above order, the assessee appealed before the Ld. CIT(A). On examination of the documents submitted by the assessee, the Ld. CIT(A) noted that the ICICI loan documents reflect it to be a Home Loan and similarly HSBC Loan Account Paper 052-221843-532 reflected it to be a home loan account. The Ld. CIT(A) further noted that the crux of the matter was the establishment by assessee that said loans were in fact taken by company and utilized for purposes of business of company. The Ld. CIT(A) held that even during the course of appellate proceedings it was not established by cogent tenable evidence by the assessee that the loan on which the interest amount was paid was used for the business purpose of the assessee company. The Ld. CIT(A) therefore dismissed the appeal of the assessee.

5. Against the above order, the assessee is in appeal before us.

6. The Ld. Counsel for the assessee submitted that the Ld. CIT(A) has confirmed the addition made by AO on account of disallowance of interest paid on borrowed funds without passing a speaking order for rejecting the explanation/documents filed by the assessee which established that the loan taken on which interest amounting to Rs.47,03,222/- was paid was for the purpose of business of the assessee company.

7. The Ld. DR supported the orders of the authorities below.

8. We have heard the rival submissions and perused the materials available on record and the documents submitted before us. On perusal

of the assessment order as well as the order of the Ld. CIT(A), it is seen that the disallowance has been made by the AO and confirmed by the Ld. CIT(A) without giving a factual detail as to how the interest payment amounting to Rs.47,03,222/- was not for the purpose of business. Further, on examination of the documents and the explanation filed, it emerges that the same needs fresh verification by the AO. We, therefore, in order to sub-serve the interests of justice and to provide an opportunity to the assessee to submit the explanation along with all the supporting documents before the Assessing Officer, set-aside the order of the ld. CIT(A) and restore it to the file of the Assessing Officer for fresh adjudication after providing reasonable opportunity of being heard to the assessee in accordance with law. Ground is allowed for statistical purposes.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 6th December, 2024.

Sd/-
[MAHAVIR SINGH]
VICE PRESIDENT

Dated 06.12.2024.

Shekhar

Copy forwarded to:

1. Assessee
2. Respondent
3. PCIT
4. CIT(A)
5. DR

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Asst. Registrar,
ITAT, New Delhi,