

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH 'B', BANGALORE**

**BEFORE SMT. ASHA VIJAYARAGHAVAN, JM (SMC)**

**ITA No.1119(B)/2014  
(Assessment year : 2008-09)**

Shri Shrikant Ghanashyamdas Darak,  
C/o J.G.Darak, H.L.Saree Merchants,  
Ilkal, Tal: Hungund.

**PAN No.ABHPD5589M**

Appellant

**Vs**

The Income-tax Officer,  
Ward-1,  
Bagalkot

Respondent

**Assessee by : Shri S. Venkatesan, CA  
Revenue by : Dr. P.K.Srihari, Addl.CIT**

**Date of hearing : 20-08-2015  
Date of pronouncement : 31-08-2015**

**ORDER**

**PER SMT ASHA VIJAYARAGHAVAN, JM:**

This appeal by the assessee is directed against the order of CIT(A), Belgaum, dated 04-06-2014 for the assessment year 2008-09.

2. The facts of the case are that the assessee filed its return of income on 27-09-2008 declaring an income of Rs.1,36,810/-. The return was processed u/s 143(1) of the Act on 15-10-2009 and the return was selected for scrutiny and notice u/s 143(2) was served on the assessee on 19-09-2009.

3. The brief facts of the case are that the assessee had paid interest to depositors i.e Darak sales Corporation, 3G Darak, Chanpa S Darak and Sudharshan Trading Company at the rate of 18%. These persons are related to the assessee and specified u/s 40A(2)(b) and the interest was considered excessive when compared to the prevailing interest rate scenario during the previous year relevant to the assessment year 2008-09. The assessee had borrowed at a higher rate and lent the monies to a sister concern at lower rate. Therefore, the interest paid in excess of 15% is considered as excessive u/s 40A(2)(a) and disallowed by the AO. The disallowance was amounting to Rs.3,03,232/- .

4. Aggrieved, the assessee preferred an appeal before the CIT(A).

5. Before the CIT(A), the assessee submitted as follows;

i) That the unsecured loans are since from the beginning of the business, in earlier years also assessee has paid the interest.

ii) That the assessee borrowed unsecured loan from family members as it is easily made available to him.

iv) That the normal rate of interest on cash credit varies from 18% to 24% in the market on compound interest basis.

v) That the assessee was forced to opt for unsecured loans from family members and relatives as other sources were costly because to make arrangement for security loan or cash credit processing charges, registration charges, etc. were to be incurred for loans other than the unsecured loans.

vii) That in the order of assessment the assessing authority has not brought on record the reason for treating the interest rate adopted by the assessee as high. Assessee has enclosed the order copy of Appellate Tribunal of Ahmedabad 'A' Bench, which gives the reasonableness to the claim of the assessee on payment of interest @18% on unsecured loans.

viii) The recipients of the interest have already declared this receipt of interest as income in their returns. The TDS provisions as required u/s 194A have been complied by the assessee.

6. The CIT(A) has held as under;

*“By lending the money at a lower rate to another sister concern the assessee has itself standard for the fair market value of the goods/services/facilities as envisaged by section 40A(2)(a) and availed by the assessee which should be applied to the assessee himself. In the case law quoted by the assessee, the facts are different in as much as the assessee in that case had not lent loans to sister concerns at a lower rate. In this view of the matter, I am of the view that the action of the AO in treating the interest paid @18% as excessive and adopting the rate of interest @15% as reasonable is correct in the facts and the circumstances of this case. Therefore, the addition of Rs.3,03,232/- made by the AO is sustained”.*

7. Aggrieved, the assessee is in appeal before us.

8. The learned counsel for the assessee Sri Venkatesan, brought to our notice that the unsecured loans are from the commencement of the business and the assessee had paid interest in the earlier years also.

8.1 The learned counsel also pointed out that normal rate of interest on cash credit is also from 18 to 24% in the market on compounded interest basis. The assessee had also borrowed unsecured loan from the family members as it is easier to obtain loan from relatives and family members rather than the bank or any financial institutions. The assessee had to take these loans out of business expediency.

9. The learned DR relied on the order of the Assessing Officer. The learned counsel has submitted that in the case of CIT Vs Sridevi Enterprises, the Hon'ble Karnataka High Court has held that since there was no disallowance in the past years when moneys had been advanced the opening balance could not be considered in this year. It was further held by the Karnataka High Court that amount due on the first day of the accounting year was the amount stood outstanding on the last day of the previous year and therefore, its nature and status could not be different as on the last day of the previous year. In view the decision of the Hon'ble Karnataka High Court that, would not be equitable to permit the revenue to take a different stand now in respect of the amounts which were the subject matter of previous year's assessments.

10. In the present case, before us since the loans are from the beginning of the business the decision of the Hon'ble Karnataka High Court squarely applies in this case in favour of the assessee. The learned counsel also relied on the decision of the Ahmedabad Bench of the Tribunal in the case of M/s Excess Engineers Vs ITO in ITA No.92(Ahd.)/2010 dated 14-12-2012 wherein it was held that the interest payment of 18% has been held as reasonable. Therefore, we are of the opinion that both the lower authorities treating the interest payment at 18% as excessive and adopting the rate of 15% as reasonable is incorrect. The addition of Rs.3,33,232/- is hereby deleted.

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

Order pronounced in the open Court on the 31<sup>st</sup> August, 2015.

**Sd/-**

**(ASHA VIJAYARAGHAVAN)**  
**JUDICIAL MEMBER**

D a t e d : 26-08-2015

Place: Bangalore

**am\***

**Copy to :**

- 1 Appellant
- 2 Respondent
- 3 CIT(A) Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order  
AR, ITAT, Bangalore