

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER**

**SMC MATTER**

**ITA no.133/Nag./2023**  
**(Assessment Year : 2014-15)**

M/s. Gajanan Cotspin  
Near Bus Stand, Shegaon  
Dist. Buldhana 444 203  
PAN – AAZFS6360A

..... Appellant

v/s

Income Tax Officer  
Ward-2, Khamgaon

..... Respondent

Assessee by : Ms. Shristi Pandey  
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 10/02/2025

Date of Order – 05/03/2025

**ORDER**

Captioned appeal by the assessee is emanating from the impugned order dated 31/01/2023, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2014-15.

2. During the course of hearing, the Registry has pointed out a delay of 44 days in filing the present appeal before the Tribunal. While going through the record available before me, I find that the assessee has furnished an Affidavit seeking condonation of delay in filing the present appeal before the Tribunal, the content of which are extracted below:–

*"Mahesh Chaturbhuj Bhattad, Managing Partner of Gajanan Cotspin, aged about 45 years, r/o Bhattad Gin, Near Bus Stand, Shegaon 444203, occupation business, do hereby solemnly state on oath as follows:*

*1. That I am managing partner of the firm M/s Shri Gajanan Cotspin situated in Shegaon, District Buldhana.*

*2. That Income Tax Commissioner of Income Tax (Appeals) Order in case of M/s Shri Gajanan Cotspin has been passed on 31/01/2023, in which the Appeal was partly allowed.*

*3. That my accountant who looks after day to day working of the firm did not know that a partly adverse order has been passed, due to which no Appeal was preferred within due date of 03/04/23.*

*4. That due to oversight and inadvertent mistake of the accountant, the Appeal is being preferred today, i.e. 27/04/2023, after a delay of 42 days.*

3. After considering the submissions of the learned Authorised Representative and averments made in the application seeking condonation of delay, I am of the opinion that the assessee is prevented in filing the appeal belatedly and I am satisfied that the delay in filing the appeal is due to reasonable cause. Consequently, I condone the delay of 43 days in filing the present appeal and admit the same for adjudication on merit.

4. The following grounds have been raised by the assessee:–

*"1. That on the facts and circumstances of the case, Ld. CIT(A) erred in confirming disallowance of interest paid of Rs.7,63,780/- from the total expenses of the Appellant due interest free funds forwarded by the Appellant. The Ld. CIT(A) ought to have seen that the Appellant had own capital/ interest free funds available of more than Rs. Two Crores, out of which interest free advances were given to a third party.*

*2. That on the facts and circumstances of the case, Ld. CIT (A) ought to have seen that the interest free funds advanced to the landlord of the Appellant is a separate transaction than that of receipt of rent.*

*3. That on facts and circumstances of the case, Ld. CIT (A) ought to have seen that no new interest free advance was given in the year under consideration and therefore the disallowance related to the same cannot be effected in the year under consideration."*

5. The only issue which I need to adjudicate in this appeal is, whether or not the learned CIT(A) was justified in upholding the addition of ₹ 7,63,780, made by the Assessing Officer on account of disallowance of interest due to some interest free advance given by the assessee.

6. The facts of the case are that, the assessee is a Partnership firm having four partners namely (i) Shri Devendra Madhusudan Bhattad; (ii) Satyanarayan R. Bhattad; (iii) Shri Kamal Govind Bhattad; and (iv) Shri Mahesh C. Bhattad, and all are resident of Shegaon. The assessee firm is engaged in the business of ginning and pressing of cotton and trading in cotton bales. The assessee firm, for the year under consideration, filed its return of income on 19/02/2015, declaring total income at ₹ 6,710. The case was selected under CASS for scrutiny. Accordingly, statutory notices were issued along with questionnaire by the Assessing Officer and served upon the assessee. In response, the assessee submitted the required details and explanations. The assessee filed a copy of Audit report in Form No.3CB & 3CD along with the Audited Balance Sheet and its annexure. The assessee produced the books of account, vouchers & relevant documents, etc., as required time to time. The same has been verified by the Assessing Officer on test check basis. The assessee has also furnished its written submissions / reply, which the Assessing Officer has extracted in his assessment order, vide Page-3 and 4 / Para-4.3. The Assessing Officer, while going through the material available before him, he, after verification of books of account, found that the assessee has given loan and advances to Shri Govind N. Bhattad.

The opening balance shown in ledger account of this person as on 01/04/2013 is at ₹ 82,86,500 and closing as on 31/03/2014 is at ₹ 44,26,500. During the year under consideration, the assessee has repaid the amount of advances time to time. It has been further seen by the Assessing Officer that re-payment made by Shri Govind N. Bhattad, is during the period from 08/10/2013 to 31/03/2014. During the course of assessment proceedings, the assessee has accepted that he has not charged any interest from this person against such huge amount. Further, the assessee has paid interest on the amount of loan taken from other creditors ranging between @12% and 15%. The assessee has not charged any interest against the amount given to Shri Govind N. Bhattad, however, he paid interest to other creditors @ 12 to 15%. According to rate of 12% the interest amount chargeable against advances given to Shri Govind N. Bhattad was calculated by the Assessing Officer which reads as under:-

<i>Amount (₹)</i>	<i>Period of Interest (₹)</i>	<i>Rate of Interest (₹)</i>	<i>Interest Amount (₹)</i>
82,86,500	01/04/13 to 30/09/2013	12%	4,97,190
44,26,500	01/10/13 to 31/03/14	12%	2,64,590
		<i>Total</i>	7,62,780

7. From the contents of the above table, the Assessing Officer was of the view that the assessee has utilized interest borrowing fund for non-business purpose and paid interest to the creditors (against unsecured loans) amounting to ₹ 7,62,780, calculated in the above manner (up to the amount given to Shri Govind N. Bhattad without charging any interest). Therefore, the

Assessing Officer sought explanation from the assessee vide letter dated 15/11/2016 to explain that why the interest amount ₹ 7,62,780, which was paid to creditors (against Unsecured Loans) up to the amount given interest free to Shri Govind N. Bhattad should not be disallowed under section 36(1)(iii) of the Income Tax Act, 1961 ("*the Act*") as the interest bearing fund utilized for non-business purpose. In response, the assessee furnished reply which was extracted by the Assessing Officer in his assessment order vide Para-4.3 at Page-3 and 4, which is also reproduced below for ready reference:-

*"The assessee has not charged any interest on debit balance of Mr. G. N. Bhattad because the assessee has not utilized borrowed funds for payment to G. N. Bhattad. The opening credit balance of Partner's Capital on 01/04/2013 is Rs. 1,70,71,192/- and the firm has not paid any interest on partners capital. Thus, the capital of the firm is sufficient to make advance to G. N. Bhattad. The Factory of the assessee is situated on the land of Mr. G. N. Bhattad since 2002-03. He was in need of money for setting a spinning mill at Burhanpur and he was to evict the assessee for disposal of his land. So the assessee advanced money to him to avoid eviction of its factory and advanced money from FY-2008-09 to G. N. Bhattad. His copies of A/c with the assessee for A. Y. 2009-10 to 2013-14 are enclosed herewith. In view of the favor shown by G.N. Bhattad in allowing user of his land at NOMINAL RENT and NOT EVICTING the assessee from his land, it was mutually agreed that no interest shall be charged to him on advance made to him. Thus interest free advance were made to G. N. Bhattad in the course of firm's business and for the purpose of carrying the business smoothly."*

8. The contents of reply filed by the assessee was not acceptable to the Assessing Officer for the following reasons:-

*"(1) The assessee has stated that he has given the amount to Shri G.N. Bhattad out of the capital of the firm and has not given any interest to the partners. But the assessee has unable to establish nexus between the amount given to Shri G.N. Bhattad and the capital of the firm. It is also pertinent to note here that capital of the firm is utilizing non-productive investments and resulting firm has borrowed capital from other creditors after paying interest to them. Therefore, reply filed by the assessee on this issue is not acceptable."*

*(ii) The assessee has stated that the amount given to Shri G.N. Bhattad for advances against the land taken from him on rent for factory purpose in the year 2008-09. Since the assessee himself accepted that the land taken from Shri G.N. Bhattad on rental basis and paid Rs. 7,000/- per month. Therefore there is no question arises for interest free advances given to this person for a very long period. There has no agreement made between the assessee and Shri G.N. Bhattad for charging rent lower than market rate and no interest charging by the assessee against this facility. It is clear from the fact that the assessee has unable to establish the nexus between the capital of partner and amount given to the Shri G.N. Bhattad and business expediency with the person Shri G.N. Bhattad."*

9. The Assessing Officer, considering the reply filed by the assessee, made addition of ₹ 7,63,780, on account of interest due to some interest free advance given by the assessee by holding as under:-

*"4.5 In view of the above facts and considering the reply filed by the assessee it is proved that the assessee has utilized interest borrowed fund not for business purpose and by this way reduced his profit. It is therefore an addition of Rs. 7,62,780/- is made in the income of the assessee for interest paid to other creditors up to amount given to Shri G.N. Bhattad for non charging interest u/s 36(i)(iii) of the income-tax Act 1961. Penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 have been initiated separately for concealment of income and furnishing inaccurate particulars of total income and in the light of addition made as above."*

Consequent upon passing of assessment order by the Assessing Officer, the assessee being aggrieved is in appeal before the first appellate authority.

10. The learned CIT(A) upheld the assessment order passed by the Assessing Officer making addition of ₹ 7,63,780, and held as under:-

*"6. Adjudication:*

*6.1 Disallowance of interest on monies borrowed applied for giving interest free advances:*

*The AO calculated interest @12% on the quantum of money lent without charging interest for the reason that the same represents funds diverted for non-business purposes. The quantification of the amount of disallowance by the AO is not in dispute. Appellant contends that the monies lent is to a related party viz., father of one of the partners and paternal uncle of the other*

*partners for allowing the firm to continue to carry on the business in the same premises (land being owned by the debtor). As the debtor but for this transaction who was in need of funds for setting up another business venture would have insisted on vacating the premises. Besides, the appellant contends that the firm has not paid any interest on capital and the aggregate capital contribution was Rs.200/lakhs and therefore this transaction could alternately be treated as withdrawal of capital. In addition, the amount lent was also from loans and advances from relatives to whom no interest was paid.*

*The AO on the other hand contends that the arrangement with the debtor in relation to the land was on a rental basis and rent of Rs.7000 per month is being paid by the firm and claimed as expenditure. Therefore, reason assigned by the appellant for making interest free advance cannot be considered to be an acceptable explanation.*

*The appellant relies upon certain legal precedents as well. Regarding the hon'ble ITAT Ahmedabad decision is concerned the factual matrix was totally different and there was a finding of fact that the advance was from funds raised in public issue and also the transaction was entered into by the amalgamating entity prior to restructure. Regarding the ITAT Bangalore decision, there was again a clear finding of fact that the funds were advanced from interest free funds. In the last case also, the relief was granted for the reason that there was no evidence of interest-bearing funds getting diverted. Therefore, no relief is possible on the basis of the above legal precedents.*

*On the factual matrix, the appellant failed to prove a one-to-one correlation on the basis of movement in funds that the interest bearing funds were not diverted for the impugned interest free advance.*

*Decision:*

*Therefore, the disallowance is upheld for the reasons stated by the AO in the assessment order.*

*This ground is therefore dismissed."*

The assessee being aggrieved by the aforesaid impugned order passed by the learned CIT(A), is in further appeal before the Tribunal.

11. The learned Counsel for the assessee reiterated the submissions made before the authorities below and prayed that the impugned order passed by the learned CIT(A) be reversed and addition be deleted.

12. The learned Departmental Representative relied on the order of the authorities below.

13. I have heard the rival arguments, perused the material available on record and gone through the order of the authorities below. The assessee has not paid any interest to partners' capital and the balance in average is more than ₹ 200 lakh. The assessee received loans and advances from relatives to the extent of ₹ 1.79 lakh that too without interest to the assessee. Some more loans and advances were received by the assessee against which no material shows that the assessee has paid interest. I further note that the assessee's factory is situated at Burhanpur, which constructed on the land which belongs to Shri G.N. Bhattad, who is one of the partners in assessee's firm. In the interest of assessee's business the money has been paid to Shri G.N. Bhattad, failing which Shri G.N. Bhattad, would have forced the assessee to vacate the land. Shri G.N. Bhattad, is said to be father of one of the partners and also the real uncle of the partners of the assessee firm. Therefore, the money being rotated was within the family members of the assessee firm. Since the assessee has not paid any interest on capital of approx. ₹ 200 lakh, the amount of ₹ 44.27 lakh or average balance of ₹ 67.47 lakh is hereby treated as capital advance and treating the same as interest paid on advance is not correct. Accordingly, I hold that the Assessing Officer was not justified in making addition on account of upholding the addition of ₹ 7,63,780, made by the Assessing Officer on account of disallowance of interest due to some interest free advance given by the assessee is not justified. Thus, we set aside the impugned order passed by the Assessing Officer by allowing all the grounds raised by the assessee.

14. In the result, assessee's appeal stands allowed.

Order pronounced in the open Court on 05/03/2025

**NAGPUR, DATED: 05/03/2025**

**Sd/-  
V. DURGA RAO  
JUDICIAL MEMBER**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur