

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI

**BEFOR SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
MISS PADMAVATHY S. ACCOUNTANT MEMBER**

**I.T.A No.652/Mum/2025
(Assessment Year: 2020-21)**

ACIT-16(3), Mumbai Room no-446, Aayakar Bhawan, M.K.Road, Mumbai	vs	Vipin Kumar Jain 19 th Floor, Nirmal, 241/242, Nariman Point, 400021 PAN:AABPJ7248Q
APPELLANT		RESPONDENT

Assessee by : ShriK.Shivram/Ms. Neelam Jadhav
Respondent by : Ms. Kavitha Kaushik (SR DR)
Date of hearing : 10/03/2025
Date of pronouncement : 20/03/2025

ORDER

PER ANIKESH BANERJEE, J.M:

The instant appeal of the revenue was filed against the order of the National Faceless Appeal Centre, Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2020-21, date of the order 05.12.2024. The impugned order was emanated from the order of the Assessment Unit, Income Tax Department (for brevity the "AO"), passed U/s 143(3) read with section 144B of the Act, date of order 29/09/2022.

2. The revenue has taken the following grounds of appeal:-

“1. Whether, on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 2,65,20,750/- made on account of notional interest purportedly earned on an unsecured, interest free loan claimed by the assessee in the Income Tax Return (ITR)?

2. Whether, on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in rejecting the applicability of IT Rule 3(7)(i), which pertains to the valuation of perquisites, or in not considering the said income as "Income from Other Sources"?

3. Whether, on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not considering that due opportunity was given to the assessee by issuing a show-cause notice on 23/09/2022, and a video conference was conducted on 27/09/2022? Notices under section 142(1) dated 01/11/2021 and 25/08/2022 were also issued to the assessee, and during the assessment proceedings, the assessee was specifically asked to provide details of all unsecured loans taken during the year under consideration?

4. Whether, on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in applying the principle of res judicata in this case by mentioning that no such addition was made in earlier or subsequent assessment years?”

3. The brief facts of the case are that the assessee is an advocate, by profession and has filed the return of income during the impugned assessment year admitting total income of Rs. 10,91,22,750/-. The assessee's case was selected for limited scrutiny and verifying the deduction under Chapter VIA, commission related to profession fees paid outside India and new foreign asset / account in which the taxpayer is signatory authority. During the assessment proceedings, Ld.AO noted that the assessee has received total of Rs.30 crores and out of that Rs.25 crores in earlier years and rest amount to Rs.5 crores in impugned financial year from M/s Reliance Progressive Traders Pvt Ltd (RPTPL) in lieu of agreement of right to pre-emption of the property. The Ld.AO considered this investment as interest generating fund and calculated the notional interest

amount to Rs.2,65,20,833/- and the said amount was duly added back with the total income of the assessee towards interest earned on the interest free unsecured loan from M/s Reliance Progressive Traders Pvt Ltd. Aggrieved assessee filed an appeal before the Ld. CIT(A).Ld.CIT(A) considering the submission of the assessee deleted the addition. Being aggrieved, the revenue filed an appeal before us.

4. The Ld.DR vehemently argued and relied on the order of the revenue authorities.

5. The Ld.AR submitted written submission, containing pages 1 to 81 which is kept in record. The Ld.AR stated that the said amount of Rs.30 crores was duly received from M/s RPTPL in lieu of agreement of right to pre-emption of property situated in 1st floor, Nirmal building, Nariman Point, Mumbai-400 021. In the right of pre-emption, there is an agreement that in case of assessee intend to sell of the property, the assessee first offer the premises to the company, RPTPL and the company shall have a right of the pre-emption for purchase of property for which the deposit of Rs.30 crores is received by the assessee. The Ld.AO notionally calculated the interest under Rule 3(7)(i) of the Income tax Rule, 1962 (in brevity the "Rule") amount to Rs. 2,65,20,833/- and added back with the total income of the assessee. But the said rule 3(7)(1) is not applicable for the assessee as the assessee is not the employee of RPTPL as the assessee has not declared any salary income in his return of income . It is calculated for the benefit arose to employee on interest-free or concessional loan provided by employer and to be taxed under the head of 'Income from salary or profession'. The Ld.AR submitted the balance-sheet which is in APB page 2, and it is depicted that the assessee is holding the

said property offer of 36,56,19,815/- and the confirmation from RPTPL is annexed in APB Page 39 and agreement of right to pre-emption dated 26/10/2016 is enclosed in APB pages 33-38. The Ld.AR invited our attention in the appeal order para 6.2.3. The relevant paragraphs 6.2.3 to para 6.2.7 on pages 30-31 are extracted below: -

“6.2.3 As can be seen from the assessment order and the submissions of the assessee, the AO concluded the assessment by making addition of Rs.2,65,20,833/-towards interest earned on the interest free unsecured loan without issuing a show cause notice to the appellant. Even during the VC, the AO has not pointed out the proposed variation on account of interest income earned by the appellant from M/s.Reliance Progressive Traders Pvt Ltd. Hence, it is clear that the addition was made beyond the issues raised in Show cause notice or VC hearing which is in violation of principles of natural justice.

6.2.4 Further, the AO stated that the unsecured interest free loan is not allowable as per Income tax Rule 3(7)(i)is not correct. Income Tax Rule 3 talks about the valuation of perquisites, however, as the appellant is a self-employed and Advocate by Profession, this rule is not applicable in this case. Rule 3(7)(i) of the Income Tax Rules is as follows:

(7) In terms of provisions contained in sub-clause (viii) of clause (2) of section 17, the following other benefits or amenities and value thereof shall be determined in the manner provided hereunder.

The value of the benefit to the assessee resulting from the provision of interest-free or concessional loan for any purpose made available to the employee or any member of his household during the relevant previous year by the employer or any person on his behalf shall be determined as the sum equal to the interest computed at the rate charged per annum by the State Bank of India, constituted under the State Bank of India Act, 1955 (23 of 1955), as on the 1st day of the relevant previous year in respect of loans for the same purpose advanced by it on the maximum outstanding monthly balance as reduced by the interest, if any, actually paid by him or any such member of his household

Provided that no value would be charged if such loans are made available for medical treatment in respect of diseases specified in rule 3A of these Rules or where the amount of loans are petty not exceeding in the aggregate twenty thousand rupees:

Provided further that where the benefit relates to the loans made available for medical treatment referred to above, the exemption so provided shall not apply to so much of the loan as has been reimbursed to the employee under any medical insurance scheme.

6.2.5 Further, it is seen from the records that no addition on account of interest was made either in earlier assessment years or in the later years. Hon'ble Supreme Court in the case of *Radhasoami Satsang SaomiBagh, Agra Vs Commissioner Of Income Tax Int83 ITR 321*, held that 13. We are aware of the fact that strictly speaking *res judicata* does not apply to income-tax proceedings Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year

6.2.6 Hon'ble Supreme Court in the case of *BSNL v Union of India 282 ITR 272* reiterated similar view that although the principle of *res judicata* does not apply to tax matters, Courts will generally accept an earlier decision unless there is a change in facts or law. In instant case there is no change in facts of earlier or later assessment years as compared to the assessment year in question.

6.2.7 in view of the above, the addition made by the AO in this regard is not justified and the ground raised by the assess is ALLOWED.”

6. We have heard the rival submissions and examined the documents available on record. Considering that the assessee received an amount of Rs. 30 crores from RPTPL pursuant to the agreement for the right of pre-emption dated 26/10/2016, and that RPTPL has duly confirmed the transaction, with the requisite confirmation is annexed, we find that the transaction is substantiated. Furthermore, the said amount was duly credited in the assessee's books of account as an interest-free loan, and the assessee is not liable to pay any interest, or any other charges related to this fund. The AO calculated the said interest amount under Rule 3(7)(i), which is inapplicable to the assessee, as the assessee is not an employee of the said party. The interest was calculated suo-moto by the

Ld. AO on interest free fund received on right to pre-emption of property. The said calculation has no basis. So, it is treated as unjustified.

Accordingly, the deletion of the addition of Rs. 2,65,20,833/- made by the Ld. CIT(A) is upheld, and the appeal filed by the revenue stands dismissed.

7. In the result, the appeal of the revenue bearing **ITA No.6521/Mum/2025** is dismissed.

Order pronounced in the open court on 20th day of March, 2025.

Sd/-

sd/-

(MISS PADMAVATHY S.)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 20/03/2025
Pavanan

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, Mumbai