

IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH, GUWAHATI
(VIRTUAL HEARING AT KOLKATA)

SHRI MANOMOHAN DAS, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No. 169/GTY/2024
Assessment Year: 2018-19

**Assam Valley Finance and Investments
Pvt. Ltd.,**

House No. 7, 3rd Floor, Seujpur,
Khanapara C/O- Manik Deka,
Kamrup Metro, Kamrup
Guwahati (Assam) - 781022
[PAN: AABCA6974B]

.....**Appellant**

vs.

D.C.I.T, Circle-1, Guwahati,

Aayakar Bhawan, Christian Basti,
G.S. Road, Assam - 781005

..... **Respondent**

Appearances by:

Assessee represented by : Miraj D. Shah, Advocate
Department represented by : Kausik Ray, JCIT

Date of concluding the hearing : 06.03.2025
Date of pronouncing the order : 19.03.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. The present appeal emanates from the order under Section 250 of Income Tax Act, 1961 (hereafter “the Act”) passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereafter “the Ld. CIT(A)”] dated 02.07.2024.

1.1 In this case, the Ld. AO found that an amount of Rs. 7,71,00,000/- was advanced when charging interest on the same. The Ld. AO took an adverse note of these 6 cumulative transactions pertaining to advancing

of loans without interest, since the assessee was a Non-Banking Financial Company (NBFC). Thereafter, the Ld. AO proceeded to estimate interest income @ 9% on this amount and added Rs. 69,39,000/- as notional income, added under Section 69A of the Act.

1.1 Aggrieved with this action, the assessee approached the Ld. CIT(A) where also he could not succeed on the basis of the following findings:

“It is evident from the findings of the Assessing Officer contained in the Assessment order that the assessee itself admitted that the funds have been given for earning interest income and assessee company (The appellant) followed mercantile system of accounting during the year under consideration. In such circumstances, the various case laws quoted by the appellant in its submission s do not come to the aid of the appellant. As the funds have been given by the appellant as per its own admission for earning interest income the appellant followed mercantile system of accounting during the year under consideration, the Assessing Officer is justified making the addition of notational interest @ 9% per annum own accrual basis on the loan amount given. Therefore, the addition made by the Assessing Officer u/s 69A on account of notational Interest on loans is hereby confirmed and the grounds of appeal no. 2 and 3 are dismissed.”

1.2. Further aggrieved with this action of the Ld. CIT(A), the assessee has filed the present appeal with the following grounds:

“1. For that in the facts and circumstances of the case the addition of Rs.69,39,000 on account of notional interest being added u/s 69A of the Income Tax Act 1961 was uncalled for and illegal. The addition therefore made be deleted.

2. For that in the facts and circumstances of the case the Learned Commissioner of Income Tax Appeals erred in upholding that the material based on which the Ld Assessment Officer passed the assessment order are collected behind the back of the assessee and which were not provided during the course of assessment proceeding, thus material should be excluded/ignored for the purpose of this case.

3. For that in the facts and circumstances of the case the Learned Commissioner of Income Tax Appeals erred in upholding that the statement of third parties on which the Ld Assessment officer relied during the course of assessment proceeding were not subjected to cross examination for the assessee, thus the third party statement relied upon should be excluded/ignored for the purpose of this case.

4. For that the facts and circumstances of the case the notice u/s 143(2) of the Income Tax Act 1961 was without jurisdiction and bad in law and hence the entire assessment order is bad in law and the same should be quashed.

5. For that in the facts and circumstances of the case the Assessment order passed was perverse and without jurisdiction and also in violation of principles of natural justice hence is bad in law and be quashed.

6. For that the assessment order passed u/s 143(3) of the Income Tax Act, 1961 was without jurisdiction and hence the Ld CIT(A) erred in confirming the assessment order. The assessment order was bad in law and should be quashed.

7. The appellant craves leave to produce additional evidences in terms of Rule 29 of the Income Tax (Appellate Tribunal) Rules 1963.

8. For that the facts and circumstances of the case the interest computed u/s 234 A/B/C/D of the IT Act 1961 is over charged and wrongly calculated and or is not applicable to the assessee case hence the interest be deleted and or correctly computed.

9. The appellant craves leave to press new, additional grounds of appeal or modify, withdraw any of the above grounds at the time of hearing of the appeal.”

2. Before us, the Ld. AR averred that even though the assessee was an NBFC but the impugned transactions did not yield any income whatsoever. He also stated that in all of the six cases, the amounts taken as loan were duly returned, albeit in succeeding financial years. The Ld. AR argued that even though the books of accounts are maintained on mercantile basis but the interest income has not been shown on notional basis simply because at the time of dispersal of the said loans it was clear that there would be no interest income accruing from the same. The Ld. AR further mentioned that it was not the case of the Ld. AO that some income had actually accrued by way of interest and the same has not been disclosed to the IT Department. The Ld. DR relied on the case of Rungamatee Trexim (Pvt.) Ltd. reported in 2008 (12) TM 1759 (Calcutta High Court), order dated 19.12.2008, and argued that the notional income could not be taxed since only real income has to be taxed.

2.1 The Ld. DR relied on the orders of authorities below and stated that in the case of NBFC the only commercial activity is advancing loan on interest. He stated that it was strange that huge sums of money had been advanced without any interest. The Ld. DR supported the finding of Ld. AO and the Ld. CIT(A).

3. We have carefully considered the rival submissions and gone through the records as also the case law relied upon by the Ld. AR. The

undisputed facts are that an amount of Rs. 7,71,00,000/- was advanced to the six parties under consideration and no interest income was shown as accrued thereon. It is not the case of the Ld. AO that some actual income was earned and not disclosed to the Department. In fact, we find that no enquiry or investigation into the facts surrounding non receipt of any income from the said parties has been conducted by the Ld. AO. It is understood that non receipt of interest income on loans advanced by an NBFC would be the starting point of any investigation to ascertain as to whether there could be any income earned outside of the books of accounts, but this suspicion in itself would not be the basis for any addition on account of notional income earned. It has been recorded by the Ld. AO in para 4 at page 1 of his order that the audited balance sheet, tax audit report and other documents were duly filed before the Ld. Assessing Officer. Admittedly, no adverse inference has been drawn from a perusal of these documents by the Ld. AO. Thus, the theory of notional income in this particular case cannot be supported under any circumstances. The case of Rungamatee Trexim (Pvt.) Ltd. (supra) supports the contention of the Ld. AR in the assessee's favour. We may add that the concept of Real Vs. Notional Income has considerable judicial precedents in terms of directing assessment of only real income and not any notional one. At this stage, we may refer to a few additional case laws as under:

- (a) Sahara India Mutual Benefit Co. Ltd. reported in 40 taxmann.com 69 (Allahabad) [paras 34-37].
- (b) P.C. Media Systems Ltd. 2 taxmann.com 13 (Delhi) [para 1]
- (c) Shivnandan Buildcon (P) Ltd. reported in 60 taxman.com 347 (Delhi) [para 7]

(d) Arihant Avenue & Credit Ltd. reported in 36 taxman.com 14
(Gujarat) [para 4.1]

3.1 Considering the facts of the case as discussed above and the judgments relied on, we hold that the Ld. AO was not justified in bringing to tax “notional income”. The addition made on that account is deleted.

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

Order pronounced on 19.03.2025

Sd/-
[Manomohan Das]
Judicial Member

Sd/-
[Sanjay Awasthi]
Accountant Member

Dated: 19.03.2025

AK, PS

Copy of the order forwarded to:

1. Assam Valley Finance and Investments Pvt. Ltd.
2. D.C.I.T, Circle-1, Guwahati
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches