

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No. 3444/Del/2023
(Assessment Year: 2017-18)

DCIT, Central Circle-6, New Delhi	Vs.	Shri Aman Sethi (legal heir of Late Shri Som Prakash Sethi through Legal Heir Shri Aman Sethi, 521, GK-2, Delhi
(Appellant)		(Respondent)
		PAN: ABYPS3902L

Assessee by :	Shri Akash Ojha, Adv
Revenue by:	Shri Mahesh Kumar, CIT (DR)
Date of Hearing	21/05/2025
Date of pronouncement	16/07/2025

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.3444/Del/2023 for AY 2017-18, arises out of the order of Id. Commissioner of Income Tax (Appeals)-24, Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. ITBA/APL/S/91/2023-24/1056579843(1) dated 27.09.2023 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 28.12.2019 by the Assessing Officer, ACIT, Circle-28(1), Delhi (hereinafter referred to as 'Id. AO').
2. The first issue to be decided in this appeal of the revenue is as to whether the Id CIT(A) was justified in deleting the disallowance made in the sum of Rs. 1,83,57,397/- on account of payment made u/s 37(1) of the Act.

3. We have heard the rival submissions and perused the material available on record. The return of income for the AY 2017-18 was filed by the assessee on 31.10.2017 declaring total income of Rs. 10,54,01,650/-. The assessee was engaged in the business of mining, contractual work and other related work under the name and style of 13 proprietorship concerns situated at different places. Soon after the filing of return of income, the assessee expired on 26.11.2017. Accordingly, the legal heir Mr. Aman Sethi was brought on record and had participated in the assessment proceedings after due intimation to the Id AO regarding his capacity as legal heir. The list of proprietorship concerns are reflected in pages 5 and 6 of the order of the Id CIT(A). Separate books of account of each of the proprietary concerns were duly maintained by the assessee. However, for the purpose of filing of income tax return, a consolidated profit and loss account has been prepared and the consolidated gains had been reflected in the return. The assessment stood completed u/s 143(3) of the Act on 28.12.2019 determining total income at Rs. 20,95,19,330/- after making various additions. All the documentary evidences submitted in support of his contentions were duly subjected to verification by the Id AO in the remand proceedings. Based on the consideration of the documents, remand report of the Id AO and rejoinder filed by the assessee, the Id CIT(A) tabulated the complete details in support of each party in pages 83 to 104 of his order. From the said tabulation made by the Id CIT(A), the parties that are in dispute before us are as under:-

- a. Damodar Prasad Sharma (transporter)-CPIPS 1945N-Rs. 14,13,820/-
- b. Lalli Ram tiwari (transporter) –AECPT 3259A- Rs. 21,04,122/-
- c. Laxmi Narayan Patel (transporter)-AXMPP 7839C- Rs. 42,10,798/-
- d. Rajkumar Patel (transporter)-BGDPP 9980J-Rs. 16,98,336/-
- e. Raj Kumar Soni (transporter)-AOQPS 2722H-Rs. 26,43,495/-

- f. Shiv Kumar Patel (transporter)-CFAPP 5343A-Rs. 10,48,329/-
- g. T. R. Soni (transporter)-AOQPS 2721E-Rs. 38,72,308/-
- h. Umesh Kumar Trivedi (transporter) ARPPT 9253Q-Rs. 13,66,189
Rs. 183,57,397/-

4. For all these parties, the Id AO had observed that the assessee had submitted the copy of confirmations, copy of invoices and copy of bank statement. It was observed that the copy of bills submitted by the assessee was matching with the confirmation account and imprest amount paid to the account of Shri D. Banerjee for onward payments. However, the amount of imprest payment as per confirmation account was not matching with the bank statement. This was the common observation made by the Id AO in the remand report for all the aforesaid parties. The Id CIT(A) observed that Shri D. Banerjee was an employee of the assessee and was maintaining imprest account for making onward payment to transporters. The payments made to Shri D. Banerjee from the imprest account to the transporters have been regularly recorded in the transporter's account. Since, the expenses were booked/ incurred by the contractors and this mechanism of imprest is only for the payment to those transporters, this mechanism of making payment through imprest amount will not alter the accounts of the expenses incurred would remain unchanged. Further, Id CIT(A) observed that since this is only a mechanism of payment to the transporters and the copy of Shri D Banerjee's imprest account was made available during the course of proceedings no adverse inference is called for. Accordingly, the disallowance made by the Id AO on account of these parties were deleted by the Id CIT(A). The Id CIT(A) also categorically gave findings that expenses claimed to have been incurred by the assessee were actually incurred by the assessee for the purpose of business. The assessee had proved the genuineness of expenses by furnishing the payment

details, copy of invoices, bank statement, PAN of the transporters, name and address of the transporters and conformation of the parties. The Id CIT(A) also noted that the payments were made through regular banking channels. Hence we hold that the disallowances made by the Id AO u/s 37 of the Act with regard to payment made to the transporters have been rightly deleted by the Id CIT(A). Accordingly, Ground Nos. 1 and 2 raised by the revenue are hereby dismissed.

5. Ground Nos. 3 and 4 raised by the revenue are challenging the deletion of interest of Rs. 53,86,044/-.

6. We have heard the rival submissions and perused the material available on record. The assessee had debited total interest in its profit and loss account in the sum of Rs. 7,15,18,095/-. The assessee had indeed advanced interest free loans and advanced to certain parties to the tune of Rs. 4,48,83,699/-. It was contended that these advances were made out of interest free funds available with the assessee. Further, the Id AO did not heed to the contentions of the assessee and proceeded to make proportionate disallowance of Rs. 53,86,044/- in the assessment by assuming market rate of interest @12%.

7. The assessee submitted that it owned capital was Rs. 51,87,00,964/- as on 01.04.2016 and Rs. 63,27,27,577/- as on 31.03.2017 and secured loan taken by the assessee was reduced to Rs. 52,90,81,446/- as on 31.03.2017 from Rs. 57,98,50,213/- as on 01.04.2016. Similarly, unsecured loans were reduced to Rs. 33,82,18,778/- as on 31.03.2017 from Rs. 39,19,74,432/- as on 01.04.2016. The assessee submitted except the loan taken from IDBI, India Bulls Financial Services Ltd, ICICI Bank Ltd , all other loans were for plant and machinery, equipment, vehicle etc. Therefore, sizable amount of interest payments made by the assessee were for term loan taken for purchase plant and machinery, equipment and

vehicles which could not have been utilized for the purpose of advancing interest free loans and advances. The remaining loans are business loans which were taken for the purpose of business. Hence, it could be conclusively proved that the interest free loans and advances were funded out of own funds of the assessee.

8. It is not in dispute that the assessee has sufficient interest free funds in its kitty to make interest free loans and advances. The Hon'ble Supreme Court in the case of South Indian bank Ltd V. CIT reported in 130 taxmann.com 178 (SC) had held that when sufficient interest free funds were available with the assessee, no proportionate disallowance of interest could be made. The Id CIT(A) had applied this case among others and had deleted the disallowance of interest, on which we do not find any infirmity. Accordingly, Ground Nos. 3 and 4 raised by the revenue are dismissed.

9. Ground No. 5 raised by the revenue is general in nature and does not require any specific adjudication.

10. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 16/07/2025.

-Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 16/07/2025

A K Keot

Copy forwarded to

1. Applicant
2. Respondent

3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi