

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

**ITA No.4485/M/2025
Assessment Year: 1995-96**

Bharat Nathalal Zaveri, 411, Kewal Indl Estate, Senapati Bapat Marg, Lower Parel, Mumbai – 400013. PAN – AAAPZ0864D	Vs.	ITO Ward 4 (3)(2), Aayakar Bhavan, Maharshi Karve Road, New Marine Lines, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Bharat Kumar, Ld. A.R.
Revenue by : Smt. Usha Gaikwad, SR. D.R.

Date of Hearing : 20.11.2025
Date of Pronouncement : 12.01.2026

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 29.02.2024, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 1995-96.

2. At the outset, it is observed that there is delay of 440 days in filing the instant appeal, on which the Assessee has submitted that he has been suffering from multiple age related chronic ailments including hypertension, cardiac issues and several mobility limitations, which required frequent medical consultations and rest. Due to fragile health and the physical limitations caused thereby, the Assessee was unable to attend day to day affairs, which

resulted in oversight and unawareness of the provisions of the law. There has been no deliberate or negligent inaction. The delay occurred was purely on account of genuine hardship and unavoidable circumstances. Thus, the delay of 440 days in filing the instant appeal may kindly be condoned.

3. On the contrary, the Id. DR refuted the reasons stated by the Assessee for condonation of delay.

4. This Court has given thoughtful circumstances to the peculiar facts and circumstances, specifically to the reason stated by Assessee for the delay occurred in filing of the instant appeal, which appears to be reasonable, plausible and unintentional. **Thus, the delay is condoned.**

5. Coming to the merits of the case, it is observed that in the instant case, this is second round of litigation. In the 1st round of litigation, the Hon'ble Coordinate Bench of the Tribunal vide order dated 26.04.2017 directed the Assessing Officer (AO) to make the factual verification from the memorandum of articles as well as the financial working and results of the company, "**whether the company from which borrowing has been made, was engaged in lending business**".

6. Though, necessary before the both authorities below have filed the relevant details, however, both the authorities below reiterated the addition of Rs. 9,05,495/- as previously made mainly by observing and holding that from the balance sheet, it has been seen that the total turnover of the Assessee company was Rs. 7,52,27,514/- and the major activities and revenue generated by M/s. Royal Antibiotics and Investment Private Limited by way of sale is of Rs. 7.53 crore, whereas interest received from loan is only

Rs. 9.18 lac for A.Y. 1995-96, this shows the main object of M/s. Royal Antibiotics and Investment Private Limited is manufacturing and sale of finished goods and loan and advanced given which considerably low. Therefore, it is very much clear that substantial part of business activities was manufacturing and finished products of M/s. Royal Antibiotics and Investment Private Limited. Further, the said company was not having any registration certificate of non-banking financial company, as per Banking Regulation Act, 1949 and subject to provision of Section 58A and directives of RBI.

7. Whereas the Assessee has claimed that before this Court has claimed as per clause 31 of the memorandum of the Royal Antibiotic Investment Pvt. Ltd., such company is also involved in money lending business activity and during the relevant year, such company has disclosed interest income of **Rs.9,18,896/-** in its profit and loss account, including Rs.3,19,730/- received from Bharat Zaveri i.e. the Assessee herein. Schedule 'N' further reflects interest expenditure of **Rs.8,09,935/-** resulting in a net interest profit of **Rs.1,08,961/-** which is attributable to 11% gross margin on the lending activities. However, interest income constitutes approximately **5.86%** of the company's total profit. The company's balance sheet shows, loans and advances amounting to **Rs.1,18,01,830/-** which is over and above 50% of the total assets of **Rs.2,04,37,869/-**. Thus, comparing sale of manufacturing with interest income is not matching, instead, the profit of money lending business, should be considered with profit of interest income separately. Further, the said company has taken loan of **Rs.73,28,274/-** (Rs.79,95,317 less (-) 6,67,043/-) and the company advances **Rs.50,89,365/-** (Rs.11,80,830 less (-) Rs.67,12,465/-).

7. Thus, on the above, the Assessee has claimed that from the above facts and circumstances, it is evident that money lending is the substantial and routine business of the said company and advances given in the ordinary course of such business, are required to be excluded from the ambit of deemed dividend under Section 2(22) (e) of the Act.

8. Having heard the parties and giving thoughtful consideration to the rival claims of the parties, this Court observed that the contentions raised by the Assessee, appears to be plausible. However, it is observed that the AO while deciding the issue has taken into consideration the total turnover of the said company to the tune of **Rs.7,52,27,514/-** and the interest received from the loan to the tune of **Rs.9.18 lakhs** and ultimately held that the main objective of M/s. Royal Anti-biotics and Investment Pvt. Ltd. is manufacturing and sale of finished goods and loans and advances given, are considerable low.

8. In the considered opinion of this Court, the Assessing Officer as per direction of the Hon'ble Co-ordinate Bench of the Tribunal vide order dated 26.04.2017 in ITA No. 4437/M/2012 and others, was supposed to determine "**whether the company from which borrowing has been made was engaged in lending business, on the basis of memorandum of association, as well as the financial working and results of the company**". The Hon'ble Bench also directed the Assessing Officer to make the factual verification required for this issue and decide the same keeping in mind the decision of the Hon'ble Jurisdictional High Court's in the case of *CIT vs. Parle Plastics Pvt. Ltd.-332 ITR-63 BOM*. As observed above, it is not in controversy that one of the main objects of the aforesaid company is/was of money lending and in view of the judgments referred to above, the Assessing Officer

was supposed to examine whether such company was engaged in lending business and/or its activities and profit and loss actually earned/suffered by such company but he instead, considered the gross total receipt from the business including lending of money carried out by such company and failed to consider the actual profit earned from the main business and lending business and interest income earned therefrom. Thus, aforesaid contentions raised by the Assessee, as observed above in para nos. 4 and 5 of this order, *prima facie* appears to be plausible as observed above and therefore for just and proper decision of the case and substantial justice, requires verification. Hence this Court accordingly remit the issue to the file of the Assessing Officer for decision afresh, after verifying the peculiar facts and demonstrated by the Assessee above, as endorsed in para nos. 4 and 5 of this order.

10. In the result, Assessee's appeal is allowed for the statistical purposes.

Order pronounced in the open court on 12.01.2026.

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

Tarun Kushwaha
Sr. Private Secretary.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.