

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2325/PUN/2025
निर्धारण वर्ष / Assessment Year : 2013-14

Dindayal Magasvargiya Sahakari Soot Girni Ltd., At Waghwadi, Post Kameri, Tal. Walwa, Sangli- 415403. PAN : AAAAD0254E	Vs.	ACIT, Circle Sangli, Sangli.
Appellant		Respondent

Assessee by : Shri Pramod S. Shingte
Revenue by : Shri R. Y. Balawade

Date of hearing : 27.01.2026
Date of pronouncement : 29.01.2026

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 01.08.2025 passed by Ld. CIT(A)/NFAC for the assessment year 2013-14.

2. The appellant has raised the following grounds of appeal :-

- “1. On the facts and in the circumstances of the case and in law, Ld. AO erred in initiating reassessment proceedings u/s 147 for AY 2013-14, being the year beyond 4 years and for which assessment order u/s 143(3) has already been passed, thereby

violating first proviso to section 147, therefore reassessment proceedings are void ab initio and consequential orders needs to be annulled.

2. *On the facts and in the circumstances of the case and in law, Ld. AO erred in initiating reassessment proceedings u/s 147 for AY 2013-14, by recording the reason to believe which is based on incorrect presumptions and therefore an action based on such presumed reason to believe is incorrect and order passed in consequence to such action is bad in law.*
3. *On the facts and in the circumstances of the case and in law, Ld. AO erred in initiating reassessment proceedings u/s 147 for AY 2013-14 by recording the reason to believe which is based on audit objection. We submit that the reason based on such borrowed satisfaction cannot be the basis of reopening the concluded assessment. Therefore, entire proceedings are void ab initio.*
4. *Without prejudice to the above grounds on the facts and in the circumstances of the case and in law, the Ld. AO erred in making addition of Rs. 2,42,00,000 by disallowing interest payable on loan from state government by invoking provisions of section 37 by assuming the same as unascertained liability. The action of Ld. AO is incorrect, illegal and without appreciating the facts of the case and therefore the entire addition deserves to be deleted.*

Your appellant prays for deletion of entire addition. Your appellant craves for to add, alter amend, modify, delete any or all grounds of appeal before or during the course of hearing in the interest of natural justice.”

3. Facts of the case, in brief, are that the assessee is a cooperative spinning mill and has furnished its original return of income on 29.03.2013 by declaring taxable income at Rs.Nil after setting off business losses of the assessment year 2012-13 amounting to Rs.2,94,27,839/-. The case of the assessee was assessed u/s 143(3) of the IT Act on 29.02.2016 by accepting the income returned by

the assessee. Subsequently on verification of records of the assessee, it is seen that the assessee had provided and debited an amount of Rs.2,82,04,762/- as interest on soft loan of Rs.22 crore received from Government of Maharashtra which was according to the Assessing Officer was an unascertained liability and the case was reopened u/s 147 of the IT Act and notice u/s 148 of the IT Act was issued to the assessee. The assessee furnished return in response to above said notice. Subsequently statutory notices u/s 143(2) and 142(1) were issued to the assessee. The assessee raised objection to the reopening of the case and the Assessing Officer rejected the objection and proceeded to assess the case u/s 143(3) r.w.s. 148 of the IT Act. According to the assessee, detailed note on interest of Rs.2,42,00,000/- is as under :-

“Total Interest on Loans debited to Profit and Loss a/c is Rs.28204762.33. However you may note the bifurcation of this figure is as under:-

<i>Interest accrued but not due on Soft Loan</i>	<i>Rs.24200000.00</i>
<i>Interest on Loan against Fixed Deposits with Banks</i>	<i>Rs. 4004762.33</i>
<i>Total</i>	<i>Rs.2,82,04,762.33</i>

Interest on loan against FDs with banks is charged as per bank statement and is debited to Profit and Loss a/c and is serviced also.

As mentioned in earlier Para No 6 interest on soft Loan of Rs.22 Crores has been provided for at Rs. 2.42 Crores as it has been accrued but not due. No actual payment of interest has been made.

This amount is debited to Profit and Loss a/c. However this amount is not disallowed u/s 43B while filing of return of income as it's a loan from government and the amount was accrued but not became due".

The assessee further replied as below:-

"Detailed note on Interest of Rs.24200000 is as under

a) Dindayal Magaswargiya Sahakari Sut Gimi is a Cooperative Spinning Unit formed for Backward Classes under Vishesh Ghatak Yojana under the aegis of 8th Five Year Plan.

b) As an eligible unit of Backward Class the society has been granted Financial Assistance from "Department of Social Welfare-Government of Maharashtra" itself. The said financial assistance was divided into financial assistance in the form of Capital Contribution and a Soft Loan.

c) Thus the interest payable of Rs. 242 lakhs is on the Loan from government itself - this may please be noted.

d) Further as per GR dtd 02-08-2003 and as per letter dtd 02-07-2004, the amount of interest has not become due till date. As per clause no.2,3 and 4 of the said letter it will become due only after receiving from government at-least 90% of 95% of project cost. (45% in form of Share Capital and 50% in form of Long term Loan). We have not received the said sums till date. You may appreciate from working enclosed herewith that a sum of Rs.5.62 Lacs is not yet received to us and hence as per extant terms of arrangement repayment of interest and principal has not fallen due.

However as per Clause 3 and Clause 6 of Notification dated 02/07/2004 and as per prevalent accounting conventions we have consistently provided for Interest on soft loan on the basis that Interest has been accrued but not fallen due A copy of our working and relevant notification is also enclosed.

e) On the background of the above facts it would be pertinent to go through CL.(d) of Sec 43B which reads as under

"Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of-

(d) any sum payable by the assessee as interest on any loan or borrowing from any public financial institution for a State financial corporation or a State industrial investment corporation, in accordance with the terms conditions of the governing such loan or borrowing

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the

income referred to in section 28 of that previous year in which such sum is actually paid by him."

A careful reading of above reveals that-

To become exigible for disallowance, the unpaid interest must a) belong to the loan from:

i) any public financial institution [or

ii) a State financial corporation or

iii) a State industrial investment corporation]

b) Have become due as per the terms and conditions of the agreement governing such loan or borrowing.

f) Now if the above tests are applied to the facts in our case then it can be noted that,

a. The loan granted to our society is from Government (Dept of Social Welfare) itself. Section 43B does not refer to loans from government.

b. The loan/interest itself has not fallen due for repayment, yet as the amount of loan sanctioned in not received completely".

4.0 The reply of the assessee has been considered and not acceptable. The loan was sanctioned by Govt. of Maharashtra between June 1998 to March 1999 and the assessee was making interest provision from F.Y 1998-99 onwards. The accumulated interest debited and not paid from F.Y 1998-99 to 2012-13 was Rs 35.18 Crore. Thus, by not withdrawing an amount of Rs 5.62 lakh, the company had not paid the government loan. Though, the assessee claimed that neither the principal nor loan was repayable. It was claiming deduction of provisions for interest knowing fully well that it was never payable. As per provisions of section 37 of the Act, provision for unascertained liability is not allowable deduction for purposes of income tax. Further, it has been held by the Supreme Court in McDowell and Co. Ltd Vs Commercial Tax Officer (SC) 154 ITR 148 that colorable devices are not part of tax planning. Tan View of the above a sum of Rs 2,42,00,000/- for AY. 2013-14 remains unexplained. Hence, an amount of Rs. 2,42,00,000/- debited to profit and loss account as interest on loan from the Govt. of Maharashtra as explained above and not paid to the Government is disallowed and added to the income of the assessee for the AY 2013-14."

4. After considering the replies of the assessee, the Assessing Officer completed the assessment u/s 143(3) r.w.s. 148 of the IT Act

by determining total income at Rs.5,39,56,861/-. The above assessed income includes addition on account of disallowance of interest of Rs.2,42,00,000/- payable to Government of Maharashtra being unascertained liability u/s 37 of the IT Act & also includes disallowance on account of carried forward losses.

5. Being aggrieved with the above assessment order, the assessee preferred an appeal before Ld. CIT(A)/NFAC. After considering the reply of the assessee, Ld. CIT(A)/NFAC dismissed the appeal filed by the assessee.

6. It is the above order against which the assessee is in appeal before this Tribunal.

7. We have heard Ld. counsels from both the side and perused the material available on record. In this regard, we find that an identical issue had come up before this Tribunal in assessee's own case for assessment year 2014-15 in ITA No.205/PUN/2025 wherein the Tribunal vide order dated 09.12.2025 allowed the appeal of the assessee by observing as under :-

“10. We have heard Ld. counsels from both the sides and perused the material available on record including the paper book furnished by the assessee. In this regard, we find that the assessee cooperative spinning mill obtained loan of Rs.22 crore from Government of Maharashtra under certain specific and peculiar conditions, copy of which are

produced by the assessee in the paper book. Since the assessee was following mercantile system of accounting the interest on above loan was provided in the books of accounts and also claimed in the profit and loss account. The Assessing Officer was of the view that since the assessee has not repaid any amount either towards interest or towards loan amount the same is not payable by the assessee, and purposely the assessee cooperative spinning mill has not obtained full amount of loan just to avoid repayment of interest on loan. Accordingly, the Assessing Officer disallowed the provision of interest of Rs.2,42,00,000/- provided in the books of accounts as unascertained liability and disallowed the same u/s 37 of the IT Act and added the same to the income of the assessee cooperative spinning mill.

11. In this regard, we find that it was the contention of Ld. counsel of the assessee that the assessee on its own cannot wave either interest on the loan amount and since the books of accounts were prepared on mercantile system of accounting the interest on the above loan was provided in the books of accounts and shown as payable in the balance sheet since last many years. It was also the contention of Ld. counsel of the assessee that the Assessing Officer has not doubted the disbursement of loan to the assessee cooperative spinning mill by the Government of Maharashtra, however at the same time the provision of interest was doubted by the Assessing Officer and it was presumed that neither interest nor loan amount was payable by the assessee cooperative society. It was also the contention of Ld. counsel of the assessee that since last many years this procedure has been followed and interest payable is provided in the books of accounts on yearly basis and the Department has also accepted the same except in one other year. It was also the contention of Ld. counsel of the assessee that the interest was provided at the rate agreed by the Government of Maharashtra in the agreement entered into by both the parties.

12. Considering the totality of the facts of the case and under the peculiar circumstances of the case, we are of the considered opinion that the loan was disbursed by the Government of Maharashtra to the assessee cooperative society under certain conditions mentioned in the agreement and agreed by both the parties and we also find that there is no quarrel that the loan was not obtained by the assessee cooperative spinning mill. Admittedly, when the state government grant loan to an entity some interest is charged and the loan is also payable under the terms and conditions of the agreement. We also find that since the assessee cooperative spinning mill has not obtained certain percentage of the loan amount out of the sanctioned loan amount the repayment could not be started however as per the mercantile system of accounting the interest is required to be provided in the books of accounts and the same cannot be termed as an unascertained liability

which can be disallowed u/s 37 of the IT Act. Under the above facts and in the circumstances of the case we are of the considered opinion that the interest of Rs.2,42,00,000/- provided in the books of account was an ascertained liability and could not be disallowed u/s 37 of the IT Act. In this regard, we also find support from the judgement passed by Hon'ble High Court of Delhi which was confirmed by Hon'ble Supreme Court in the case of Commissioner of Income-tax vs. Modern Spinners Ltd. [2016] 76 taxmann.com 20 (SC) wherein SLP of the department was dismissed, Hon'ble court held as under

“During assessment proceedings, Assessing Officer disallowed deduction on said provision of interest on ground that same would amount to unascertained liability - High Court held that liability under terms and conditions of said compromise could not be wiped out since it was not a unilateral act on part of assessee but was a bilateral consented act on behalf of parties which was of binding nature in terms of said agreement and, therefore, it could not be termed as an unascertained liability and assessee would be entitled to deduction of said provision of interest - Whether there is no estoppel against Statute and Act enables and entitles assessee to claim entire deduction in manner it was claimed - Held, yes [Para 1] [In favour of assessee]”

13. Respectfully following the above judgement passed by Hon'ble Delhi High Court which was affirmed by Hon'ble Supreme Court (supra), we deem it appropriate to direct the Assessing Officer to allow deduction of interest of Rs.2,42,00,000/- provided in the books of account on loan amount of Rs.22,00,00,000/- obtained from Government of Maharashtra. Accordingly, the Ground no.4 raised by the assessee is allowed.”

8. Respectfully following the above decision of the Tribunal in assessee's own case (supra), we deem it appropriate to set-aside the order passed by Ld. CIT(A)/NFAC and direct the Assessing Officer to allow deduction of interest of Rs.2,42,00,000/- provided in the books of account on loan amount of Rs.22,00,00,000/- obtained

from Government of Maharashtra. Accordingly, the Ground no.4 raised by the assessee is allowed.

9. Since we have allowed the appeal of the assessee on Ground no.4, the other grounds becomes academic & need not be adjudicated.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 29th day of January, 2026.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 29th January, 2026.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr.CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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Assistant Registrar
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.