

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ "बी" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI SHAILENDRA KUMAR YADAV, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./I.T.A. No.7181/Mum/2010

(निर्धारण वर्ष / Assessment Year : 2001-02)

Shri Mohanlal M Shah, 601, Laxmi Villa, 45-Tagore Road, Santacruz (W), Mumbai-400054	बनाम/ Vs.	Income Tax Officer Ward 19(2)(4), Piramal Chamberes, Lalbaug, Mumbai-400012
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स्थायी लेखा सं./ PAN : AABPS8064P

अपीलार्थी ओर से / Assessee by	Ms.Nikita Agarwal
प्रत्यर्थी की ओर से/Revenue by	Shri Shivaji B Ghode

सुनवाई की तारीख / **Date of Hearing** : **3.8.2016**

घोषणा की तारीख / **Date of Pronouncement** : **25.8.2016**

आदेश / ORDER

PER RAJESH KUMAR, A. M:

This is an appeal filed by the assessee against the order dated 2.7.2010 passed by the Id.CIT(A)-30, Mumbai for the assessment year 2001-02.

2. The issue raised in the ground of appeal is in respect of upholding the order of AO disallowing the interest of Rs.2,18,618/- considering the same as non-business expenditure.

3. Facts of the case are that this is second round of litigation. In the first round, the co-ordinate bench of the Tribunal in ITA No.84/Mum/2005 vide order dated 4.1.2008 set aside the addition of Rs.2,18,168/- on account of disallowance of interest made by the AO and restored the issue to the file of the AO to decide the issue afresh after verifying the source of funds. Similarly, the issue raised in ground No.2 regarding addition of Rs.27,477/- as unexplained investment was also restored to the file of the AO. The AO again disallowed the said interest for the reasons that the assessee could not bring any evidence on record which will prove that these advances were given out of interest free advances to the family members of the assessee and out of capital available in the business. The Id. CIT(A) during the appellate proceedings, also confirmed the addition as made by the AO as under :

"2.6 It is also seen that good part of interest bearing funds are shown as received during the current financial year. It is Rs.6,99,000/- received on 3.12.2000. Perusal of the bank account shows that the amount has gone to Vandana Enterprises. Appellant is partner in that firm. Share of income from a partnership firm is exempt from tax in terms of section 10(2A) of the Act. No interest expenses can therefore be allowed on the amount of Rs.6,99,000/- in terms of section 36(1)(iii) of the Act in view of the specific provisions of section 14A of the Act. Balance interest bearing loans are shown as opening balances which have been carried forward from the preceding years. The utilization of or the purposes of appellant's business is not explained and

2.7 It is a settled law that to claim deduction u/s.36(1)(iii), the onus is on the assessee to prove that all the three necessary conditions are fulfilled. The conditions are that the capital was

borrowed which was paid/payable on such borrowed capital and finally such borrowed capital was used for the purposes of the business. In this case, the appellant had failed to discharge the onus. In view of the above, the addition of Rs.2,18,130/- is confirmed. The ground of appeal No.1 is dismissed."

4. We have carefully considered the submissions of the parties, perused the material placed before us including the orders of authorities below. The Id.AR strongly submitted before us that the assessee has its own sufficient capital balance and interest free funds available in the business out of which the interest free loans were given to the family members and therefore the addition as made by the AO and sustained by the Id.CIT(A) was totally wrong and against the facts of the case. The Id. AR drew our attention to the page 46 of the paper book wherein the source of fund and application of funds which is reproduced as under for the sake of convenience :

	Interest free funds
Capital account	Rs.58,09,192
Ritaben M Shah	Rs.4,14,095
Rahul M Shah	Rs.2,65,000
Total interest free fund	64,84,288
Investment-land	16,25,,381
Right in flat	12,11,000
Namrata Investment	4,12,,450
Ravi Nirman Grah	90,000
Loans on which interest not paid	23,87,945
Balance	2,18,762
Total interest free investments	59,43,521

The Id. AR while explaining the sources and utilization of the funds argued that since the assessee has sufficient capital funds of Rs.58,09,192/-and other free loans Rs.6,79,096/- thereby making total interest free funds available with the assessee at Rs. 64,84,288/-. The assessee has given interest free loans of Rs.23,87,945/- and made other investments aggregating to Rs.59,42,520/-. A perusal of the above facts reveals that the assessee has sufficient interest free funds available with him out of which he advanced interest free loans and there revenue could controvert the arguments coupled with facts and also bring on records any materials to the contrary and therefore the addition as made by the AO and sustained by the Id.CIT(A) is not justified and cannot be sustained. We also find strong support from the decision of jurisdictional High Court in the case of CIT V/s RELIANCE UTILITIES AND POWER LTD. [2009] 313 ITR 340 (Bom) in which it has been held that if the assessee has mixed funds i.e. interest bearing and interest free funds and he has made some investment on which there is no income or the income is earned then the presumption shall be that the assessee has made investment out of interest free funds. Applying the same analogy here we are inclined to hold that the interest free advances to family members were given out of interest free funds available with the assessee. We, therefore, following the

ratio laid down by the Hon'ble jurisdictional High Court set aside the order of the Id.CIT(A) and direct the AO to delete the addition.

5. As regards the second issue raised by the assessee, we find that the said addition represents the difference in the opening balance as per the assessee's books of accounts and confirmation which is issued by the third party in respect of account of minor son Rahul M Shah which was added to the total income of the assessee as unexplained investment. We find that the addition has been made by the AO on the basis of third party confirmation though the difference related to the opening balance of the assessee's son account in the books of the assessee. We find that the AO has rightly made the addition and Id.CIT(A) rightly upheld the same. In our opinion the order passed by the Id. CIT(A) does not call for our interference from our side. Accordingly the same is upheld by dismissing the ground of the assessee.

7. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 25.08.2016.

Sd

sd

(SHAILENDRA KUMAR YADAV)

(RAJESH KUMAR)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई MUMBAI; दिनांक DATED :25th Aug .2016

Sr.PS:SRL:

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

True copy

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai