

आयकर अपीलिय अधीकरण, न्यायपीठ –“A(SMC)” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A(SMC)” BENCH: KOLKATA
 (समक्ष) श्री ए.टी. वर्की, न्यायिक सदस्य)
 [Before Shri A. T. Varkey, JM]

ITA No. 344/Kol/2020
Assessment Year: 2007-08

SubhakaranSampatlal (HUF) PAN: AALHS 7096B	Vs.	Income-tax Officer, Wd-45(2), Kolkata
Appellant		Respondent
Date of Hearing		02.07.2020
Date of Pronouncement		08.07.2020
For the Appellant		Shri S.S Gupta, ld.AR
For the Respondent		ShriJyayantaKhanara, JCIT, ld. Sr.DR

ORDER

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-13, Kolkata dated 31-10-2019 for the assessment year 2007-08.

2. At the outset itself, the Learned Counsel for the assessee pointed out that ground no. 1 is general in nature and therefore, he is not pressing it. Ground no. 4 is in respect of addition of Rs.96,000/- on account of alleged low drawings, and the Ld. AR does not press this ground. Hence both the ground nos. 1 & 4 are dismissed. Consequently, the addition of Rs.96,000/- made on this issue stands confirmed.

3. Ground no. 2 of the assessee is as under:-

2. That the Ld. ITO erred in law as well as in facts in disallowing Rs. 57,4201- being net interest (i.e. excess of interest paid Rs. 11,27,041/- over interest received Rs. 10,69,621/-) as debited to Profit & Loss A/ c of the proprietary concern M/s. Subhakaran Sampatlal in as much as in view of the facts and circumstances of the case no such disallowance was at all called for and the Ld. CIT(A) erred in confirming the same.

4. Brief facts of the case are that the AO noted that the assessee is engaged in the business of ‘Trading of Gwar, Refined Dal’ and has returned total income of Rs. 1,11,010/-. The AO noted that the assessee debited an amount of Rs.57,120/- (net) as expenses towards Interest and has credited Rs.11,27,041/- against closing balance of unsecured loan of Rs.94,49,511/- and also shown to have received Interest of 10,69,621/- against closing

balance or loan given of Rs.1,01,07,309/-. According to AO, it is therefore clear that the assessee did not utilize the unsecured loans for his business purpose but for giving loan to other parties. From the details filed, according to AO, it appears that the amount was given to those concerns, in which the Karta or the members has substantial Interest. According to AO, a letter dated 14-10-2009 was issued to the assessee, in which he was requested to furnish explanation. According to AO, in this regard, the Ld. AR of the assessee filed a letter dated 23-11-2009, in which he claimed that the loans were taken for assessee's proprietorship business purpose. But, according to AO, he failed to furnish any evidence that the loans were utilized exclusively for his business use. Whereas it was noted by AO that his total sales during the year is only Rs.18.80 Lakhs against 'NIL' purchase. Therefore, according to AO, it is not established that the loans were utilized for his business purpose. The AO observed that as per Form 3CD attached with the Audit Report of the assessee, his nature of business is 'Wholesale Trading of Gwar, Refined Dal etc'. Therefore, the AO concluded that there is no justification of debiting net Interest of Rs.57,420/- in the Trading Account of the business of the assessee. Hence, Rs.57,420/- was disallowed and added back to the total income of the assessee for the Asst. Year 2007-08. Aggrieved, the assessee preferred an appeal before the Id. CIT(A), who confirmed the order of the AO. Aggrieved, the assessee is before this Tribunal.

5. The Id. AR submitted that the AO has disallowed this amount of Rs. 57,420/- on the reason that the assessee is not a lender of money which means the assessee is not into the business of lending money, thereby interest out going was disallowed. The Id. AR of the assessee drew our attention to the fact that the assessee has three sources of income i) from HUF, ii) from his proprietorship concern, M/s. Subhakaran Sampatlal, wherein both lending of money as well as trading of food grains is done and 3rd source is that the assessee is also partner of a Firm. It was pointed out by the Ld. AR that even though the AO had made similar disallowance of Rs. 23,538/- in respect of interest expenditure by holding that assessee-HUF is not involved in the business of lending, however, the Id. CIT(A) taking note that assessee HUF also received interest to the tune of Rs. 42,545/-, in the appellate stage, the Id. CIT(A) has allowed the relief of Rs. 23,538/- as interest expenditure. The Ld. AR took me through page-19 of the paper book to show that assessee HUF was also into lending business and taking note of this fact the Ld CIT(A) gave relief. Coming back to the disallowance of Rs.57,420/-, which I am concerned, the Id. AR of the assessee drew my

attention to page-22 of the paper book, which shows the Trading and Profit & Loss Account for the year ended 31-03-2007 i.e AY under consideration in respect of assessee's proprietorship concern, M/s. Subh Karan Sampatlal,, wherein the assessee had shown interest (net) expenditure of Rs. 57,420/-, The same has been disallowed by the AO on the ground that the assessee is not into the business of lending money. In order to prove that assessee's proprietorship concern was also engaged in the business of lending , the Id.AR drew our attention to pages 27 of the paper book, which shows the interest paid and received for the year ended 31-03-2007 in respect of assessee's proprietorship concern, M/s. Subh Karan Sampatlal, which shows that the assessee (proprietorship concern) had paid interest of Rs.11,27,041/- and was in receipt of interest of Rs.10,69,621/-. So net interest expenditure comes to Rs.57420/- (Rs. 11,27,041 – Rs. 10,69,621). Since the assessee has received interest and paid interest as noted above, the AO's view that the assessee has not utilized the loan taken for business purpose, is per se erroneous and, therefore, I find from the facts narrated that since the assessee's proprietorship concern was doing the business of money lending, which is evident from pages 22 & 27 of the paper book. Therefore, the AO has erred in disallowing the interest expenditure of Rs. 57,420/-. Therefore, I direct the AO to delete the addition of Rs.57,420/-.

6. Ground no. 3 reads as under:

3. That the Ld. ITO erred in law as well as in facts in disallowing Rs. 3,64,903/- out of the total interest paid Rs. 11,27,041/- on the alleged ground that Loans & Advances have been given wherein the rate of interest charged is lower as compared to rate of interest paid on loans taken by the assessee in as much as in view of the facts and circumstances of the case no such disallowance was at all called for and the Ld. CIT(A) erred in confirming the same and in directing the Ld. ITO to recompute the said amount by applying the differential rates of interest to the Loans & Advances made by the assessee.

7. In respect of this ground, the AO has made disallowance by observing as under:-

"It is therefore clear that the assessee received interest at much lower rate by utilizing Its fund at higher lending rate. It Is also revealed that M/s Gum Industries is the only debtor of the assessee and all of the above person any way related with the assessee. At the same time, it is clear that the assessee has sufficient fund in his hand to repay the loan of higher rate. But without doing this, he gave loan at much lower rate, which is quite unreasonable. The assessee also failed to offer any explanation in this matter. In view of the above, interest is allowed on unsecured loan @ 8.625/- (average of 7.25% & 10.00%) only. Accordingly, allowable Interest comes to Rs.7,62,138/- [Rs.11,27,041/- X 8.625/12.2] out of total Interest payments of Rs.11,27,041/-. Hence, Rs.3,64,903/- is disallowed & added back with the total Income of the assessee for the Asst. Year 2007-08."

8. Aggrieved, the assessee preferred an appeal before the Id. CIT(A), who was pleased to dismiss the same. Aggrieved, the assessee is before this Tribunal.

9. It is noted that the assessee has received deposit from several persons (details set out by AO at page 2 & 3 of his order) and paid to them interest @ 12.2% and has lent/given loan @ 7.25% and 10%. The AO has made the disallowance of interest by taking note that the assessee has taken deposit at 12.2% and has given loan at 7.25% and 10%, [which comes to an average interest rate of 8.62%]. Therefore, he (AO) restricted the average interest expenditure claimed by assessee at 12.2 % to 8.625% and made the said disallowance. This action of the AO cannot be accepted. It is noted that the AO could not controvert the fact of assessee borrowing money by accepting deposits and payment of interest to them at 12.2%, which the assessee claimed as interest expenditure which has been restricted by the AO at 8.62%. The AO has neither doubted the genuineness of the borrowings/receiving deposits as well as payment of interest on the deposit nor the assessee giving loan to two companies and in-turn receiving interest. No material has been relied by the AO in the assessment order to show that any amount of interest higher than the amount shown by the assessee in his account was received by the assessee. Thus, the entire transaction of taking of loan and payment of interest thereon and giving of loan and earning of interest there from was duly established. The only factor that prompted the AO for making the disallowance was that there was no prudence in carrying out the activity in such a manner, which culminated in incurring of net interest loss which fact could have at the best be a triggering point for further investigation, but could not have been the basis or foundation for the disallowance of interest expenditure claimed by the assessee. Since the disallowances made was merely on surmises and conjectures, it needs to be deleted. For that I rely on the judgment of the Hon'ble Kerala High Court in the case of CIT Vs. Apollo Tyres Ltd (No.2) reported in (2019) 416 ITR 546 (Ker), wherein the Hon'ble High Court on similar facts has held as under:-

Where a sum of Rs. 22,20,000 was disallowed on account of the lower of 4 per cent. charge on inter-corporate deposit than interest paid by the assessee on the ground that the interest claimed to have received by the assessee in respect of the inter-corporate deposit could not have been lower than the interest actually paid by the assessee in respect of similar deposit made other companies with the assessee, but the Tribunal reversed this,

Held, that there could not be any "universal rate" or rule in regard and the Department had no case that the interest satisfied by the assessee at a higher rate to the companies concerned, in connection with the inter-corporate deposits procured by the assessee, was actually not incurred by the assessee. The finding and reasoning given by the Tribunal were quite in order specially since it was a "question of fact" and no substantial question of law was involved."

10. I also rely on the judgment of the Co-ordinate Bench, ITAT, Mumbai in the case of Rupee Finance & Management Pvt. Ltd Vs. DCIT reported in (2017) 57 ITR (Trib) 205 (Mum.). The Co-ordinate Bench in the case (supra) held as under:

The assessee obtained loan from various patties on higher rate of interest and advanced the money to certain other parties at lower rate of interest resulting in loss. The Assessing Officer held that no prudent business man would incur loss in this manner and made proportionate disallowance out of interest expenses under section 36(1)(iii) of the Act. The Commissioner (Appeals confirmed the order of the Assessing Officer. On appeal:

Held, that the assessee had taken loans from well established and duly identified financial institutions. The factum of borrowing of amount and payment of interest from those companies had neither been doubted nor denied by the Assessing Officer. Similarly, the assessee gave loans to corporate entities. The factum of earning of interest from those companies was duly verified by the Assessing Officer and nothing could be brought on record by him to negate or even doubt if any amount of interest higher than the amount shown by the assessee in its accounts was received by the assessee. Thus, the entire transaction of taking of loan and payment of interest thereon and giving of loan and earning of interest therefrom was duly established and substantiated. Nothing ingenuine had been found by either of the authorities. The only grievance of the authorities was that there was no prudence in carrying out the activity in such a manner which culminated in incurring of net interest loss. The doubt noted by the Assessing Officer with respect to incurring of loss could have at the best be a triggering point for further investigation but that itself could not be a conclusive ground to make disallowance in the hands of the assessee. The Assessing Officer had failed in carrying out any investigation to contradict the transaction. In fact, he made some verification but nothing ingenuine or wrong was noted by him. Rather, the transactions were duly substantiated. Similarly, at the stage of the Commissioner (Appeals) nothing wrong or ingenuine could be brought on record by him. The disallowance had been made merely on the basis of surmises and conjecture .A Revenue officer could not sit in the armchair of a businessman and dictate how a business was to be carried out. Hence the Assessing Officer had no material in his possession so as to enable him to made the disallowance. Thus, the disallowance was not sustainable in law and it was to be deleted. “

11. Respectfully following the ratio of the aforesaid two case laws and for the reasons given in para 9 (supra) I direct the deletion of Rs.3,64,903/-. Therefore, the appeal of the assessee is partly allowed.

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

Order is pronounced in the open court on 08 July, 2020.

Sd/-
(Aby. T. Varkey)
JudicialMember

Dated : 08 July, 2020

PP.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Subhakaran Sampatlal (HUF), 207, M D. Road, Room No. 74, Kolkata-700 007.
- 2 Respondent – ITO, Ward-45(2), Kolkata.
3. CIT(A)-13, Kolkata (sent through e-mail)
4. CIT- , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

/True Copy,

By order,

Assistant Registrar