IN THE INCOME TAX APPELLATE TRIBUNAL 'B' BENCH, PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER AND SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No. 393/PUN/2022 : A.Y. 2016-17

Subhash Asaram Chordiya HUF
S.No. 14/3 Plot No. 33, S.no. 14/3 Plot no. 33
Asavi Camp road, Tipre Colony – 423 203
PAN: AAVHS 4961 F — Appellant

Vs.

The Asstt. Commissioner of Income-tax
Malegaon — Respondent

Appellant by : Shri Sanket Joshi
Respondent by : Shri M.G. Jasnani

Date of Hearing : 29-03-2023
Date of Pronouncement : 29-03-2023

ORDER

PER SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

This appeal preferred by the assessee emanates from order of the NFAC, Delhi dated 03-12-2021 as per the following grounds of appeal.

1. *The learned CIT(A) erred in confirming the disallowance of interest of Rs.17,22,831/- out of total disallowance of Rs.20,71,6501- made by the A.O by holding that the assessee had utilized interest bearing loan funds for making interest free advances to three parties, namely, M/s. Panchavati Infra [notional interest disallowed of Rs. 17,00,000/-], M/s. Maritime Impex Pvt. Ltd. [notional interest disallowed of Rs.IO,747] and Jayshree Chordiya [notional interest disallowed of Rs.2084] without appreciating that the said disallowance was no justified on facts and in law.*

2. *The learned CIT(A) failed to appreciate that the interest free funds available with the assessee were far more than the interest free advances made to the above three parties and hence, in the absence of any direct nexus shown by the A.O/CIT(A) to prove that the said advances were made out of interest bearing loan funds, no disallowance towards interest was warranted in law and therefore, the disallowance of Rs.17,22,831/- confirmed by the CIT(A) was not justified.*

3. *The learned CIT(A) erred in not appreciating that with respect to the interest free advance O IRs.95,OO,OO0/- made to M/s. Panchavati Infra, it ~as duly demonstrated that the said advance was made on 03.08.2012 out of loan taken from M/s. Bora Finance Corporation and the said loan was fully repaid in earlier years itself and therefore, the loans taken during the current year were utilized for repayment of huge losses incurred in share transactions and therefore, the disallowance of notional interest of Rs.17,00,000/- confirmed by the CIT(A) in respect of interest free advances made to above party was not justified on facts of the case.*

4. *Without prejudice to the above grounds, It is submitted that the assessee had duly charged interest @ 18% p.a. from 03.08.2012 to 31.03.2015 III respect of amount of Rs.95,00,000/- advanced to M/s. . Panchavati Infra which had*

remained outstanding and since the said advance had turned into nature of an NP A, the assessee had not charged any interest on the same in the books for FY 2015 -16 as a matter of prudent accounting policy and thus, considering the peculiar facts, the said business advance could not be considered as interest free advance and the disallowance of interest of Rs.l7,00,0001- made by the CIT(A) in respect of the same is not justified on facts and in law.

5. *The appellant craves leave, to add, alter, amend and delete any of the above grounds of appeal. "*

2. The assessee has filed an application for condonation of delay in filing the present appeal. Following the judgment of the Hon'ble Supreme Court in Cognizance for Extension of Limitation, In re 438 ITR 296 (SC) read with judgment in cognizance for Extension of Limitation, In re 432 ITR 206 (SC) dated 08-03-2021, we condone the delay and the case is heard on merits.

3. The relevant facts are that the assessee filed its return of income for AY. 2016-17 on 17.10.2016 declaring Loss of Rs.(-)1,27 65,563/-. Assessee is engaged in the business of Real Estate and F&O Trading. On examination of financial statements the AO held as under:

> "Appellant had paid interest @ 18%p.a to various parties Totaling Rs.20,71 ,650/- on loans taken.
>
> Appellant had given loans to various parties . Some of the loans advanced were interest free. On other loans the appellant charged interest @15%p.a. In one case the interest charged is 10.50%. Total interest earned is shown at Rs. *7,66,581/-.*
>
> The details of loans given and loans taken is tabulated in para 5.1 of the assessment order.

Show cause notice was issued to the assessee on 27.12.2018 On one hand the assessee had taken interest bearing loans and on other hand he had advanced interest free loans of Rs. *1,48,50,249/-* (5 parties). Assessee was asked as to why the interest paid of Rs. *20,71,650/-* be not disallowed. Assessee filed reply vide letter dated 27.12.2018 and is reproduced in para 5.1 d of the assessment order. The assessee stated that "If justified the difference to that extent may be disallowed". The AO held that interest free loans of Rs.

1,48,50,249/- have been given to 5 parties (including Rs.1*,35,78,369/-* to M/s. Panchavati Irifra.). If the interest @15% is charged then accrued interest works out to Rs. *22,27,537/-* which is higher than the interest paid of Rs. 20,71,650/ . The AO disallowed the interest paid of Rs. *20,71,650/-.* Expenses to the tune of Rs. 82,034/- were disallowed u/s 37 of the Income-tax Act, 1961 (hereinafter referred to as the "Act"). As a result, the Total loss was assessed at Rs. (-) 1,06,11,879/-.

4. Aggrieved by the order of the A.O the matter went up in appeal before the NFAC and it was held by the first appellate as follows:

> *After examination of submissions filed by appellant the disallowance of interest works out to*
>
> *Interest disallowable related to Jayshree R. Chrodiya Rs.2,084/-*
>
> *Interest disallowable related to Maritime Impex P.Ud.- Rs.10,747/-*
>
> *Interest disallowable related to Panchvati Infra - Rs.17,10,000/- @18% of Rs.95,00,OOOI-. Appellant itself stated that interest bearing loan of Rs.95,00,0001- from Bora Finance was advanced to Panchvati Infra. Appellant has shown interest charged of RsAO,78,369/- @18% from 03.08.2012 to 31.03.2015, but no interest has been charged for present FY i.e. 2015-16. The contention of Appellant that there cannot be any disallowance of interest on amount of RsA0,78,369/- as same was not out of Interest bearing funds is acceptable. Thus, interest disallowable in this case works out to Rs.17,10,000/-.*
>
> *Thus, as a result of above discussion the disallowance of interest works out to Rs.17,22,831/- (Rs.2 084/- + Rs.10,747/- + Rs.17,10,000/-). Hence the addition of Rs.17,22,831/- made by the AO is confirmed and relief of Rs. 3,48,819/- (Rs. 20,71,650/- - RS.17 22,831/-) is allowed to the Appellant.* ***Ground of Appeal No 1 is partly allowed."***

5. Aggrieved with the part disallowance on the issue of Rs. 17,22,831/-, the assessee preferred this appeal before us. At the very outset, it was submitted by the ld. A.R that the facts and the issue is covered by the decision of Pune Tribunal in ITA No. 2076/PUN/2019 for A.Y. 2013-14, order dated 02-02-2023 in the case of Darode Jog Realties Pvt. Ltd., Pune, Vs. ITO Ward 1(3) Pune. In this case also, as evident from para 11 that during the previous year relevant to assessment year under consideration, the assessee-firm had not advanced any loans to Darode Jog and Assocites and it was also an admitted fact that in

earlier years in which the loans were made no disallowance of interest was made. The Tribunal relied on the ratio of Hon'ble Karnataka High Court in the case of CIT Vs. Sridev Enterprises, 59 Taxman 439 (Karnataka) and Hon'ble Delhi High Court in the case of CIT Vs. Givo Ltd. (ITA No. 41/2010), wherein it was held that for the purposes of disallowance of interest u/s 36(1)(iii) of the Act in case where the disallowance was not made in the earlier years, the opening balance of loans and advances to sister concern should not be considered for the purposes of disallowance of interest. It is exactly the facts situation in the case before us. As in the above referred case in the light of the judicial pronouncements of the Hon'ble High Courts this issue was allowed in favour of the assessee. The ld. D.R could not bring on record any documents/evidences contrary to the facts which are already stated on record. Therefore, following the same parity of reasoning the appeal of the assessee stands allowed.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on this 29th day of Mach 2023.

Sd/-	sd/-
(INTURI RAMA RAO) **ACCOUNTANT MEMBER**	**(PARTHA SARATHI CHAUDHURY)** **JUDICIAL MEMBER**

Pune; Dated, the ___ day of March 2023.
Ankam

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The NFAC, Delhi
4. concerned Pr. CIT
5. D.R. ITAT 'A' Bench
5. Guard File

BY ORDER,

Sr. Private Secretary
ITAT, Pune.

/// TRUE COPY ///

1	Draft dictated on	29-03-2023	Sr.PS/PS
2	Draft placed before author	29-03-2023	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on	29-03-2023	Sr.PS/PS
7	Date of uploading of order	29-03-2023	Sr.PS/PS
8	File sent to Bench Clerk	29-03-2023	Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		