

IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.3964/Mum./2023
(Assessment Year : 2014-15)

ITA no.3911/Mum./2023
(Assessment Year : 2015-16)

Gallant Freight And Travels Pvt. Ltd.
117-124-A, Adarsh Industrial Estate
Sahar Road, Chakala, Andheri (East)
Mumbai 400 099 PAN – AABCG3824C

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-9(3)(2), Mumbai

..... Respondent

Assessee by : Shri N.H. Gajria
Revenue by : Shri Manoj Kumar Singh

Date of Hearing – 14/02/2024

Date of Order – 20/02/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the assessee challenging the separate impugned orders of even date 05/09/2023, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Center, Delhi, Mumbai, [*learned CIT(A)*], for the assessment years 2014-15 and 2015-16.

2. Since both appeals involve similar issues arising out of a similar factual matrix, therefore these appeals were heard together and are being decided by way of this consolidated order. With the consent of the parties, the appeal for

the assessment year 2014-15 is taken up as the lead case and the decision rendered therein shall apply *mutatis mutandis* to the appeal for the assessment year 2015-16.

ITA No.3964/Mum./2023
Assessee's Appeal – A.Y. 2014-15

3. In its appeal, the assessee has raised the following grounds:-

"1. On the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) National Faceless Appeal Centre, Delhi has erred in confirming the disallowance of Rs.12,88,528/-being interest paid to related parties u/s 40 A (2) clause (b) of the Act on the ground that the appellant had the enough funds to pay the debts and the borrowings from the related parties were not necessary.

2. On the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) National Faceless Appeal Centre, Delhi has erred in confirming the disallowance of Rs.6,00,000/- on account of notional interest on Rs.50,00,000/- as remaining idle with the appellant in their bank account.

3. On the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) National Faceless Appeal Centre, Delhi has erred in confirming the disallowance of the Transpiration Charges of Rs. 4,35,081/-on the ground that the appellant has not deducted TDS thereon as applicable."

4. The issue arising in ground No. 1, raised in assessee's appeal, pertains to part disallowance of interest expenditure under section 40A(2)(b) of the Act.

5. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is engaged in the business of a freight cargo agency. For the year under consideration, the assessee filed its return of income on 14/10/2014 declaring a total income of Rs. 83,16,580 and book profit under section 115 JB of the Act of Rs. 68,65,071. The return filed by the assessee was selected for scrutiny and statutory notices under section

143(2) as well as section 142(1) of the Act were issued and served on the assessee. From the details filed by the assessee, it was observed that the assessee has paid interest of Rs. 38,65,583 to its related persons and family members @18%. As the payment was made to related parties, the assessee was asked to justify the rate of interest paid. In response thereto, the assessee submitted that the interest paid @18% is reasonable since the amount of loan was received without any security, and in the current scenario the loans are either quite difficult to obtain or the rates are quite high. The Assessing Officer ("AO") vide order dated 02/12/2016 passed under section 143(3) of the Act did not agree with the submissions of the assessee and held that the average bank rates are 12% and the banks are willing to finance. Thus, it was held that the rate of interest @18% paid by the assessee to the related persons is unreasonable. Accordingly, the AO considering the interest over 12% (i.e. Rs. 12,88,528) as excessive and unreasonable and disallowed the same under section 40A(2)(b) of the Act.

6. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and held that the assessee has failed to prove the necessity of taking loans at a higher interest rate when it was having its own funds lying in the bank account. The learned CIT(A) further held that the banks charge a rate of interest of 12% and even as per the provisions of section 40(b)(iv) the rate of interest of 12% has been allowed to the partner of the firm and therefore the same can be taken as a benchmark for paying interest on unsecured loans to a related party. Being aggrieved, the assessee is in appeal before us.

7. We have considered the submissions of both sides and perused the material available on record. As per the assessee, it is carrying on the business as a freight agent, who has to make payment to the airlines on the 15th and 30th of every month on account of freight charges irrespective of the fact whether the amount of freight charges has been realised or not. It is further submitted that in case a company fails on any occasion, it will lose recognition with IATA. Accordingly, the assessee has availed unsecured loans of Rs. 3,97,53,471 from its related persons and family members @18% per annum during the year under consideration. It is further the plea of the assessee that the loan from banks involves not only a lot of paperwork but also involves the securities to be placed against the loans besides obtaining the personal guarantees of the Directors. Further, the interest is payable to the bank every month, however, the payment of interest to the related parties is once a year and that too at the year end. Accordingly, as per the assessee, the payment of interest @18% is totally justified.

8. From the perusal of the record, it is discernible that there is no dispute regarding the fact that the parties to whom the assessee has paid interest are related parties within the meaning of section 40A(2)(b) of the Act. Further, as is evident from the record, the AO by considering the rate of interest @18% paid to related persons on unsecured loans as excessive disallowed the interest paid in excess of 12%. Before proceeding further, it is relevant to note the provisions of section 40A(2)(a) of the Act, which reads as under:-

"(2)(a) Where the assessee incurs any expenditure in respect of which payment has been or is to be made to any person referred to in clause (b) of this sub-section, and the Assessing Officer is of opinion that such expenditure

is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment is made or the legitimate needs of the business or profession of the assessee or the benefit derived by or accruing to him therefrom, so much of the expenditure as is so considered by him to be excessive or unreasonable shall not be allowed as a deduction:”

9. Therefore as per section 40A(2)(a) of the Act, if in the opinion of the AO, the payment made by the assessee to any related person is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment is made, so much of the expenditure as is considered excessive or unreasonable by the AO shall not be allowed as deduction. Thus, under the aforesaid section, the AO is required to first find out the fair market value of the goods, services, or facilities for which the payment was made. In the present case, the AO by considering the average interest rates charged by the banks @12% treated the rate of interest @18% paid by the assessee to related persons as excessive and unreasonable under section 40A(2)(b) of the Act. At the outset, we agree with the submissions of the assessee that the loans granted by the banks always involve securities to be placed. However, in the present case, admittedly, the loans received from the related parties are unsecured loans. It is further pertinent to note that though the AO considered the rate of interest charged by the bank @12%, however, did not provide the name of such bank and the terms of such loan for comparing the same with the unsecured loans received by the assessee. Therefore, we are of the considered view that the AO though considered the rate of interest at 12% to be reasonable under section 40A(2)(b) of the Act, however, did not bring any material on record to sufficiently substantiate its claim.

10. During the hearing, the learned Authorised Representative ("*learned AR*") by referring to the general ledger of interest received during the year, forming part of the paper book on page 17, submitted that the assessee has earned interest @18% per annum from Rajesh Estate and Nirman Ltd. Therefore, the prevailing market rate amongst the private parties is 18%, which justifies the payment of interest by the assessee to its related parties for availing of unsecured loans. We find that the aforesaid aspect has not been examined by the lower authorities.

11. Further, the learned CIT(A) seeks to place reliance upon the provisions of section 40(b)(iv) of the Act to support the conclusion of the AO in considering the rate of interest of 12% as reasonable. In the present case, it is pertinent to note that it is not anybody's case that the interest has been paid by the assessee to its partners and rather fact of the case is that the assessee has availed unsecured loans from its related persons at the interest rate of 18% per annum. Thus, we find no merits in the reliance placed by the learned CIT(A) on the aforesaid provision for justifying the rate of interest at 12%.

12. Since, in the present case, the relevant material for determining the fair market value of the interest rate for availing unsecured loans has not been examined, we deem it appropriate to restore this issue to the file of the AO for *de novo* adjudication. In the interest of justice, one more opportunity is granted to the assessee to furnish the relevant material/documents to justify its claim that payment of interest @18% is at fair market value. With the

above directions, the impugned order on this issue is set aside and ground no. 1 raised in assessee's appeal is allowed for statistical purposes.

13. The issue arising in ground No. 2, raised in assessee's appeal, pertains to the addition of Rs. 6 lakh on account of notional interest on the amount lying idle in assessee's bank account.

14. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, it was noticed that the assessee was holding bank accounts with the Bank of Bahrain and Kuwait, and HDFC Bank. It was further noticed that the huge balance was maintained with both the banks. As on 31/03/2013, the bank balance was Rs. 1.60 crore and as on 31/03/2014, the same was Rs. 3.16 crore. It was further observed that on this balance no interest was earned by the assessee. Further, the assessee has availed an unsecured loan of Rs. 3.97 crore from related persons on which it has paid interest @18%. Since there was a huge bank balance maintained by the assessee and on the other hand there were unsecured loans availed by the assessee, it was asked to justify the holding of such a high bank balance. In response thereto, the assessee submitted that it is liable to pay to the airlines on every 15th and 30th of the month towards freight charges, and therefore on average it requires funds to the tune of Rs. 1.87 crore on 1st and 15th of every month. Accordingly, it was submitted that in view of the aforesaid circumstances, the assessee maintains such balances on these dates. The AO vide order passed under section 143(3) of the Act did not agree with the submissions of the assessee and by computing the average balance of Rs. 25 lakh per month in each account came to the

conclusion that to the extent of Rs. 50 lakh interest expenses @12% is not allowable. Accordingly, the AO made a disallowance of Rs. 6 lakh and added the same to the total income of the assessee. The learned CIT(A), vide impugned order, upheld the findings of the AO on this issue. Being aggrieved, the assessee is in appeal before us.

15. We have considered the submissions of both sides and perused the material available on record. During the hearing, the learned AR by referring to the summary of the bank statement, in paper book-2, submitted that in the business of the assessee, it has to make payments to the airlines on the 15th and 30th of every month on account of freight charges. Accordingly, prior to the aforesaid dates, sufficient credit is maintained in the bank accounts to honour the commitments towards the airlines. From the perusal of the aforesaid summary, duly supported by the statements of the bank accounts of the assessee maintained with the Bank of Bahrain and Kuwait as well as HDFC Bank, we find that prior to the payment to various airlines such as Jet Airways, Global Aviation, Cathay Pacific, Air France, etc. assessee's bank accounts are maintaining huge balance, however after the payment to the aforesaid airlines the balance in assessee's accounts even goes down to negative balance. Thus, from the perusal of the above documents, we agree with the submissions of the assessee that it needs funds for its working capital to run the business. Therefore, we find no merits in the findings of the AO on this issue.

16. Further, from the perusal of the decision of the coordinate bench of the Tribunal in *Yash Vehicles (P) Ltd. Addl. CIT, [2009] 34 SOT 502 (Jabalpur)*,

we find that in the facts of that case, the taxpayer was maintaining a substantial cash balance out of which the major portion was in the safe, and accordingly, the coordinate bench came to the conclusion that the taxpayer could not justify funds borrowed from sister concern as it had sufficient funds which remained idle throughout the relevant year. However, in the present case, as noted above the huge funds in assessee's bank account were required for the purpose of working capital and were paid to various airlines during the course of its business as a freight agent. Therefore, we are of the considered view that the aforesaid decision of the coordinate bench of the Tribunal is factually distinguishable. It is further pertinent to note that the aforesaid addition has been made by the AO without invoking any provision of the Act, and therefore in our considered view, also lacks the authority of law. In view of the aforesaid findings, the impugned addition is set aside. As a result, ground no. 2 raised in assessee's appeal is allowed.

17. The issue arising in ground no. 3, raised in assessee's appeal, pertains to the disallowance of transportation charges paid by the assessee.

18. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration the assessee claimed transport expenses of Rs. 12,65,674 and motor lorry expenses of Rs. 6,35,783. During the assessment proceedings, the assessee was asked to furnish the details of the amount paid, PAN, complete address, and copy of TDS returns showing the payment of the aforesaid amount. In the absence of any details, the AO vide order passed under section 143(3) of the Act held that in case of transport charges, the TDS is not applicable but subject to the

condition that they should be PAN with the transporter and the assessee obtains the same. Further, the non-deduction of TDS is also required to be reported in the TDS return. It was held that it appears that no such names have been shown in the TDS return and no details in this regard have been filed by the assessee. Accordingly, the AO disallowed an amount of Rs. 19,01,457.

19. The learned CIT(A), vide impugned order, granted partial relief to the assessee and restricted the disallowance to Rs. 4,35,081 in respect of transportation charges paid to Mr. Jitendra M. Pawaskar, to whom the payments made are more than Rs. 25,000 and the TDS has not been deducted. Being aggrieved, the assessee is in appeal before us.

20. We have considered the submissions of both sides and perused the material available on record. During the hearing, the learned AR by referring to the provisions of section 194C(6) of the Act submitted that TDS under this provision is not required to be deducted while crediting or paying a sum to the transporter upon the furnishing of PAN of the transporter to the person paying or crediting such sum. The learned AR submitted that the assessee must have provided the PAN to the AO during the assessment proceedings, however, there is no documentary evidence, at present, regarding the same. In the interest of justice, we grant one more opportunity to the assessee to provide the PAN of the transporter to AO in order to prove the compliance of provisions of section 194C(6) of the Act. Accordingly, this issue is restored to the file of the AO for *de novo* adjudication after necessary verification of the details filed by the assessee. With these directions, the impugned order on

this issue is set aside, and ground no. 3 raised by the assessee is allowed for statistical purposes.

21. In the result, the appeal by the assessee is allowed for statistical purposes.

ITA No.3911/Mum./2023
Assessee's Appeal – A.Y. 2015-16

22. In its appeal, the assessee has raised the following grounds:-

"1. On the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) National Faceless Appeal Centre, Delhi has erred in confirming the disallowance of Rs.19,02,573/-being interest paid to related parties u/s 40A(2) clause (b) of the Act on the ground that the appellant had the enough funds to pay the debts and the borrowings from the related parties were not necessary.

2. On the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) National Faceless Appeal Centre, Delhi has erred in confirming the disallowance of Rs. 6,00,000/-on account of notional interest on Rs.50,00,000/- as remaining idle with the appellant in their bank account.

3. On the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) National Faceless Appeal Centre, Delhi has erred in confirming the disallowance on the ground that the appellant has enough funds of their own and had no need to borrow the funds from related parties which amounts to the instructions as to how to carry out the business.

4. Your appellant request leave to add, alter or modify the grounds of appeals, if so required."

23. The issue arising in ground no. 1, raised in assessee's appeal, pertains to part disallowance of interest expenditure under section 40A(2)(b) of the Act. Since a similar issue arising out of a similar factual matrix has already been decided in assessee's appeal for the assessment year 2014-15, therefore our findings/conclusions rendered therein shall apply *mutatis mutandis*. Accordingly, with similar directions as rendered in assessee's appeal for the assessment year 2014-15, this issue is restored to the file of

the AO for *de novo* adjudication. As a result, ground no. 1 raised in assessee's appeal is allowed for statistical purposes.

24. The issue arising in grounds no. 2 and 3, raised in assessee's appeal, pertains to the addition of Rs. 6 lakh on account of notional interest on the amount lying idle in assessee's bank account. Since a similar issue arising out of a similar factual matrix has already been decided in assessee's appeal for the assessment year 2014-15, therefore our findings/conclusions rendered therein shall apply *mutatis mutandis*. Accordingly, grounds no. 2 and 3 raised in assessee's appeal are allowed.

25. In the result, the appeal by the assessee is allowed for statistical purposes.

26. To sum up, both appeals by the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 20/02/2024

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 20/02/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai