



IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.2106/Mum./2023
(Assessment Year : 2014-15)

Genxt Mobile LLP
Gala no.104/174-175, Udyog Bhavan
Sonawala Road, Goregaon (East)
Mumbai 400 063 PAN – AALFG9545K

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-3(1), Mumbai

..... Respondent

Assessee by : Shri Hemant Shah
Revenue by : Shri Ram Krishna Kedia

Date of Hearing – 04/10/2023

Date of Order – 11/10/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 28/04/2023, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2014-15.

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

"1. On the facts and circumstances of the case and in law the learned Commissioner (Appeals) is not justified in confirming the rate of interest to 12% allowed by the Assessing Officer as against 18% claimed by the appellant u/s 40A(2)(b).

2. On the facts and circumstances of the case and in law the learned Commissioner (Appeals) is not justified in holding that the rate of Interest paid to related party is restricted to 12% without considering the prevailing market rate of Interest for Unsecured Loans and ascertaining the fair and reasonable rate of Interest paid by appellant.

3. On the facts and circumstances of the case and in law the learned Commissioner (Appeals) has erred in disallowing the Interest paid to the related concern without appreciating the fact that, there is no tax evasion for payment of Interest to the sister concern and is revenue neutral.

4. Your Appellant craves leave to add, alter, modify and submit any other grounds during the course of hearing without prejudice."

3. The only dispute raised by the assessee is against the part disallowance of interest expenditure under section 40A(2)(a) of the Act.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is a wholesale and distributor of mobile phones and accessories. For the year under consideration, the assessee filed its return of income on 05/09/2014 declaring a total income of Rs. 1,05,47,380. 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. During the assessment proceedings, inter-alia, upon perusal of details of unsecured loans and interest paid on such loans, it was observed that the assessee has paid interest @ 9% to 18%. It was further observed that the assessee has paid interest amounting to Rs. 63,04,069 @ 18% to SM Edible Pvt. Ltd. on an unsecured loan of Rs. 8,68,04,069 taken and repaid during the year. It was further found that the said company is a related party covered under section 40A(2)(b) of the Act. Accordingly, the assessee was asked to show cause as to why excess interest paid to related parties should not be disallowed. After considering the submissions of the assessee, the Assessing Officer ("AO") vide order dated

29/12/2016 passed under section 143(3) of the Act by drawing an analogy from the provisions of section 40(b)(iv) of the Act, which restricts allowance of payment of interest to the partner of the firm to 12% per annum, held that interest payment in excess of 12% to related parties, especially the sister concern, is squarely hit by the provisions of section 40A(2)(a) of the Act. Accordingly, in view of the specific provisions of section 40A(2)(a) of the Act, interest payment in excess of 12% was disallowed and a difference of Rs. 21,01,356 (i.e. Rs. 63,04,069 – Rs. 42,02,713) was added to the total income of the assessee. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee on this issue. Being aggrieved, the assessee is in appeal before us.

5. We have considered the submissions of both sides and perused the material available on record. In the present case, there is no dispute regarding the fact that the assessee paid interest to the tune of 9% to 18% on unsecured loans availed by it. The assessee also did not bring any material on record to rebut the allegation of the Revenue that SM Edible Pvt. Ltd. is a related party within the meaning of section 40A(2)(b) of the Act. As is evident from the record, the AO was of the view that the interest at the rate of 18% paid to SM Edible Pvt. Ltd. on an unsecured loan of Rs. 8,68,04,069 is excessive and accordingly disallowed 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:"

6. 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. However, in the present case, it is evident that the AO considered the rate of interest as allowed under section 40(b)(iv) of the Act, wherein payment of interest to any partner is allowed up to 12%, as the fair market value of the rate of interest. It is pertinent to note that it is not anybody's case that the interest has been paid by the assessee to its partner, rather it is the claim of the assessee that in order to meet the short-term finance, the assessee borrowed money on a short-term basis from SM Edible Pvt. Ltd. and repaid the loan taken during the year with interest @18%. Thus we are of the considered view that without finding the comparative fair market value of the rate of interest for the loan taken by the assessee, the AO proceeded to make the part disallowance by drawing an analogy to the section which does not apply to the facts of the present case. It is evident from the record that the AO has not disallowed the interest of 18% paid to SM Edible Pvt. Ltd. by comparing the same with the interest paid by the assessee to other parties @9% to 18%. Therefore, we are of the considered view that

the AO while partly disallowing the interest paid by the assessee has not followed the provisions of section 40A(2)(a) of the Act, which requires comparison with the fair market value of the goods, services or facilities, which in the present case is the loan taken by the assessee. Accordingly, we find no basis in upholding the part disallowance of interest payment made by the assessee, and the same is directed to be deleted. As a result, the impugned order passed by the learned CIT(A) is set aside and grounds raised by the assessee are allowed.

7. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 11/10/2023

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 11/10/2023

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