

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

AND

SHRI MANISH BORAD, ACCOUNTANT MEMBER

**ITA No.15/Ind/2017
Assessment Year: 2009-10**

Shri Sachidanand Madhukarrao Chitale, 29, Jawahar Marg, Indore (Appellant)	बनाम/ Vs.	ACIT-4(1) Indore (Revenue)
P.A. No.ABAPC4968Q		

Appellant by	Shri Manoj Fadnavis, AR
Respondent by	Shri V.J. Boricha, DR
Date of Hearing:	24.10.2018
Date of Pronouncement:	02.11.2018

आदेश / O R D E R

PER KUL BHARAT, J.M:

This appeal by the assessee is directed against order of the CIT(A)-II, Indore dated 15.11.2016 pertaining to the assessment year 2009-10. The assessee has raised following grounds of appeal:

“Ground No.1 Addition of Rs.9,96,360/- on account of deemed interest on advance of Rs.83.03 lacs to M/s Karan Associates.

1.1 *That the addition of Rs 9,96,360/- is made on a notional basis and is not actual income of the assessee.*

1.2 *That the Ld A.O. has not disallowed the expenditure on interest but has added notional income.*

1.3 *That the notional income is not income which can be brought to tax under section 28 of the Act.*

1.4 *That the Ld. CIT(A) has erred in confirming the addition made by the Ld. A.O. in holding that the loan given to M/s. Karan Associates is not for the business purpose.*

2. Briefly stated facts giving rise to the present appeal are that case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) of the Income Tax Act, 1961 (hereinafter called as 'the Act') was framed. Thereby, the A.O. made addition of Rs.9,96,360/- in respect of interest of advance. The A.O. noticed that there was no business in advancing loan to M/s. Karan Associates. It is observed by the A.O. that the loan was not given for business purpose. Against this, the assessee preferred an appeal before Ld. CIT(A) on the basis that no interest has been charged from the loans so given. As per appellant, the same has become sticky, however, at the same time, the interest has been charged as expenses and the profit & loss account has been debited by the interest expenses. Ld. Counsel for the assessee reiterated the submissions as made in the written synopsis. The synopsis of the assessee is reproduced as under:

1. The Facts of the Case are mentioned on the **Page 4** of the Order of Hon'ble CIT(A).
2. The relevant portion of the assessment order is at **Page 2** of the Order of Hon'ble CIT(A) order.
3. The relevant para of the Demand report is reproduced at **Page 3** of the Order of Hon'ble CIT(A) order.
4. The finding of CIT (A) is at **Page 7** of the order.
5. Following Pages of the paper book may kindly be perused:-
 - a) Copy of Balance Sheet and Profit & Loss A/c of M/s Karan Enterprises for A.Y. 2009-10 at **Page 1 to 5**
 - i. Details of the loans raised at **Page 3**.
 - ii. Details of advances given to M/s Maikal Fibers Ltd. at **Page 5**.
 - b) Copy of account of M/s Karan Enterprises in the Books of assessee from 01/04/2005 to 31/03/2010 at **Pages 6 to 11**.
 - i. Copy of accounts for year ended 31/03/2006 showing interest earned of Rs. 71,561/- at Page 6.
 - c) Copies of Cases filed against M/s Maikal Fiber Ltd. by M/s Karan Enterprises under section 138 of Negotiable Instrument Act, 1881 at **Pages 12 to 51**.
 - d) Balance Sheet of the assessee as at 31/03/2009 showing capital of Rs. 88.89 Lakhs at **Page 150** of the paperbook.

e) Interest debited to P & L A/c	Rs. 8,76,802/-
Interest credited to P & L A/c	Rs. 4,64,729/-
(35,800+9,690+4,19,239)	-----
Net Interest Debited	Rs. 4,12,073/- at Page 152

6. The Ld. AO has not considered the capital of the assessee is Rs. 88.89 lakhs as against the amount advanced of Rs. 83.03 Lakhs.
7. The AO has disallowed Rs. 9.96 Lakhs as against net interest debited of Rs. 4.12 Lakhs/-
8. The Ld. AO has misunderstood the submission of assessee that M/s Karan Enterprises is a family friend. Family friend is not defined in the Act. M/s Karan Enterprises is not the relative of the assessee as defined in sub-section (41) of section 2 of the Act. Even in case of relative only excessive and unreasonable expenses are inadmissible under clause (a) of sub-section 2 of section 40A of the Act.
9. The Ld. AO has not considered that the loans & Advance to M/s Karan Associates were given with the intension to earn interest. The interest earned in F.Y. 2005-06 has been offered to tax.
10. The Ld. AO has not considered the difference between not providing interest on sticky loans and interest free loans. It is not that interest free loans were given by the assessee. The present case relates to not providing interest on sticky loans. The recovery of principal amount itself is doubtful. Legal proceedings are initiated against M/s Miakal Fiber Ltd. When the principal amount has become sticky, interest cannot said to accrue, both as per Tax Laws as well as Accounting Standards.
11. The assessee relies on the decision of Hon'ble Supreme Court in the case of **UCO Bank v/s Commissioner of Income Tax(1999) 154 CTR (SC) 88: (1999) 237 ITR 889 (SC) : (1999) 104 TAXMAN 547 (SC)**

Income- Accrual-Interest on sticky advances of a banking company- Interest credited to suspense account excluded from income- Assessment was made on the basis of CBDT Circular No. F. 201/21/84 TTA-II, dt. 9th Oct., 1984, which was applicable at the relevant time- Said circular provides a test for deciding what is a

doubtful debt and weather interest could be included in income in such cases- If the Board has considered it necessary to lay down a general test for deciding what is a doubtful debt, necessary to lay down a general test for deciding what is a doubtful debt, and directed that all ITOs should test such amounts as not forming part of the income of the assessee until realized, this direction by way of a circular cannot be considered as travelling beyond the powers of the Board under section 119- Circular was binding under section 119-It is also consistent with section 145- It clarifies the way in which these amounts are to be treated under the accounting practice followed by lender-Assessment was not , therefore, erroneous and prejudicial to the interest of Revenue and CIT was not justified in including the interest amount in the income of the assessee.

12. The above decision has been followed by the Jurisdiction High Court in the case of **State Bank of Indore vs. Commissioner of Income Tax (2002) 177 CTR (MP) 221 : (2002) 257 ITR 463 (MP) : (2002) 124 TAXMAN 725**

Income-Accrual-Interest on sticky loans- Credited to interest suspense account-Amount accrued but difficult to recover and not in fact recovered-Not taxable in view of Circular No. F. 201/21/84-ITA-II dt. 9th Oct, 1984.

13. The above decision of Hon'ble Supreme Court is also been followed by High Court of Bombay in case of **American Express International Banking Corporation vs. Commissioner of Income Tax(2002) 177 CTR (Bom) 442 : (2002) 258 ITR 601 (Bom) : (2002) 125 TAXMAN 488**

Income-Accrual-Interest on sticky loans and advances –Not taken to P&L a/c –Not liable to be taxed –UCO Bank vs. CIT(1999) 154 CTR (SC) 88 : (1999) 237 ITR 889 (SC) followed.

14. Reference is to be made to para 9.2 of **Accounting Standard (AS) 9 Revenue Recognition issued by Institute of Chartered Accountants of India**

“9.2 Where the ability to assess the ultimate collection with reasonable certainty is lacking at the same time of raising any claim, e.g., for escalation of price, export incentives, interest etc., revenue

recognition is postponed to the extent of uncertainty involved. In such cases, it may be appropriate to recognise revenue only when it is reasonably certain that the ultimate collection will be made. Where there is no uncertainty as to ultimate collection, revenue is recognised at the time of sale or rendering of service even though payments are made by installments.”

3. Ld. D.R. opposed the submissions and supported the orders of the authorities below.

4. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. It is stated by the assessee that the money so advanced could not be recovered. He submitted that the authorities below have not considered submissions made by the assessee in right perspective. He submitted that the loans and advances to M/s. Karan Associates were given with the intention to earn interest. The interest earned during the financial year 2005-06 was duly offered to tax. He submitted that the authorities below failed to appreciate that there is a difference between not providing interest on sticky loans and interest free loans. He

submitted in the present case that it is not the case where the assessee has given interest free loans. Reliance is placed on the judgement of the Hon'ble Supreme Court rendered in the case of UCO bank Vs. CIT 237 ITR 889. Further reliance is placed on the judgement of Hon'ble M.P. High Court in the case of State Bank of Indore Vs. CIT 257 ITR 463. We find that these judgements are given in respect of the banking company. Admittedly, the assessee is not a banking company. Reliance is placed upon the decision of the Tribunal in the case of S.N. Chitale Vs. ITO in ITA No.310/Ind/2008, wherein the assessee had given loan to his father the A.O. had made addition of presumptive interest. It is demonstrated by the assessee that the advance so made become non recoverable. The assessee has also made efforts to recover the amount but of no avail. Admittedly, the income tax is charged on income. In the present case, it is not the case that the income has

in fact accrued to the assessee. In fact, the recovery of the principal amount is in doubt. Moreover, the assessee has nowhere claimed as business advance, it was a simple loan on which the assessee was earning interest and offering the same for tax till A.Y. 2005-06, subsequent to it loan became bad and no interest was earned. Therefore, under the peculiarity of facts and in view of the judgement of the Hon'ble Supreme Court in the case of UCO Bank Vs. CIT (supra) and the judgement of the jurisdictional High Court in the case of State Bank of Indore Vs. ITO (supra) and the decision of the coordinate bench in the case of S.N. Chitale (supra), we direct the A.O. to delete the addition.

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

Order was pronounced in the open court on 02.11.2018.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Indore; दिनांक Dated : 02/11/2018

VG/SPS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard
file.

By order

Assistant Registrar, Indore

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