

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "डी", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

श्री टी.आर. सेन्थिल कुमार, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.1387/Ahd/2024 & 1388/Ahd/2024
निर्धारण वर्ष / Assessment Years : 2017-18 & 2018-19

Shyam Realities Tejendra Arcade Ganji Farak Mill Compound Rakhiyal Cross Road Rakhiyal, Ahmedabad - 380 021 (Gujarat)	<u>बनाम/</u> <u>v/s.</u>	The Dy.CIT, Circle-2(2)(1) Ahmedabad - 380 015
स्थायी लेखा सं./PAN: ABVFS 2603 M		

(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
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Assessee by :	Shri Bandish Soparkar, AR
Revenue by :	Shri Atul Pandey, Sr.DR

सुनवाई की तारीख/Date of Hearing : 23/04/2025
घोषणा की तारीख /Date of Pronouncement: 28/04/2025

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

These two appeals filed by the assessee for Assessment Years (AYs) 2017-18 and 2018-19 are directed against the respective appellate orders passed by the Ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), New Delhi [hereinafter referred to as "CIT(A)"], dated 27.06.2024. In the impugned orders, the Ld. CIT(A) confirmed the disallowance of interest on unsecured loans to the extent of Rs.36,69,000/- for A.Y. 2017-18 and Rs.38,94,295/- for A.Y. 2018-19, as originally disallowed by

the Assessing Officer. Since the issues involved in both appeals are common and interlinked, arising from the same factual and legal matrix, both appeals were heard together and are being disposed of by way of this consolidated order.

Facts of the case:

2. The assessee is a partnership-firm engaged in the business of construction and development. During the respective assessment years, the Assessing Officer disallowed interest expenditure on unsecured loans on the ground that the loans were either unexplained or not genuine. For A.Y. 2017-18, the AO treated certain unsecured loans as unexplained under section 68 of the Act and disallowed proportionate interest thereon. For A.Y. 2018-19, although no fresh loans were received, interest on opening balances of such unsecured loans – treated as bogus in the earlier year – was again disallowed by the AO, citing lack of genuineness and creditworthiness. The CIT(A) upheld the disallowance in both years, primarily on the basis that the genuineness of the loans had not been established, and therefore, the interest paid on such loans could not be allowed.

3. Following is the tabulated summary of assessments in case of both the years:

Particulars	A.Y. 2017-18	A.Y. 2018-19
Return filing date	30.10.2017	31.10.2018
Returned Income	Rs. 33,06,110/-	Rs. 97,90,060/-
Assessment completed under section	143(3)	143(3) r.w.s. 144B

Date of AO's order	21.12.2019	09.09.2021
Date of CIT(A)'s order	27.06.2024	27.06.2024 (common order)
Additions made by AO	1. Rs. 83,34,774/- u/s 68 (unsecured loans)	1. Rs. 14,69,04,326/- (additional revenue based on 60% WIP)
	2. Rs. 36,69,000/- interest disallowance on above loans	2. Rs. 38,94,295/- interest disallowance on earlier year loans
	3. Rs. 4,70,832/- (loan balance discrepancy)	3. Rs. 33,90,51,606/- (alleged violation of section 269SS)
	4. Rs. 47,16,513/- (bogus purchases)	
Assessed Income	Rs. 204,97,229/-	Rs. 51,04,16,994/-
CIT(A)'s decision	1. Addition u/s 68 deleted	1. WIP addition of Rs. 14.69 Cr deleted
	2. Interest disallowance Rs. 36,69,000/- sustained	2. Section 269SS addition of Rs. 33.90 Cr deleted
	3. Bogus purchase addition deleted	3. Interest disallowance of Rs. 38,94,295/- sustained
Key reasons for AO's disallowance	Failure to prove genuineness/creditworthiness of loan creditors; no confirmation from 12 parties	Continued failure to prove genuineness of loans from prior year; interest disallowed based on earlier findings
Key findings of CIT(A)	Genuineness of principal loans not established despite deletion of u/s 68 addition; interest disallowance upheld	Principal not added u/s 68 in current year, but interest disallowed for lack of evidence proving loan genuineness

4. Aggrieved by the orders of the CIT(A), the assessee is in appeal(s) before us raising following grounds:

ITA No. 1387/Ahd/2024 for AY 2017-18

1. *On the facts and in the circumstances of the case as well in law, the NFAC (Appeals), New Delhi has erred in upholding the disallowance of interest on Unsecured Loans to the tune of Rs. 36.69 Lacs.*
2. *The appellant further reserves its right to add, alter, amend or modify any of the aforesaid grounds before or at the time of hearing of an appeal.*

ITA No. 1388/Ahd/2024 for AY 2018-19

1. *On the facts and in the circumstances of the case as well in law, the NFAC (Appeals), New Delhi has erred in upholding the disallowance of interest on Unsecured Loans to the tune of Rs. 38,94,295/-.*
2. *The appellant further reserves its right to add, alter, amend or modify any of the aforesaid grounds before or at the time of hearing of an appeal.*

5. During the course of hearing before us, the Ld. Authorized Representative (AR) submitted that the interest paid on the loans cannot be disallowed unless the principal is held to be non-genuine in the relevant year. It was further submitted that in the absence of any fresh addition u/s 68 of the Act in A.Y. 2018-19, interest disallowance lacks legal foundation. The assessee had deducted TDS on the interest paid and the same was credited to the accounts of lenders. It was argued that unless the principal amount is treated as non-genuine, interest cannot be disallowed separately.

5.1. The Ld. AR also placed reliance on the following judicial precedents:

- Vidya Education Investments (P.) Ltd. [2021] 129 taxmann.com 5 (Delhi - Trib.).
- United Foods (P.) Ltd. [2023] 148 taxmann.com 452 (Delhi - Trib.).
- Ojas Tarmake (P.) Ltd. [2023] 156 taxmann.com 75 (Gujarat).
- Hareshbhai Sakariya [2023] 148 taxmann.com 115 (Surat-Trib.).

These decisions were cited to support the proposition that interest cannot be disallowed in the absence of a sustainable addition of principal under section 68, and that the AO had not brought on record any contrary evidence except non-compliance with notices issued under section 133(6) of the Act.

5.2. The Ld. Departmental Representative (DR) supported the findings recorded by the Assessing Officer as well as the Ld. CIT(A) in their respective orders. It was submitted that the assessee had repeatedly failed to discharge its onus under section 68 of the Act with respect to establishing the identity, creditworthiness, and genuineness of the persons from whom unsecured loans were allegedly obtained. It was also contended that interest under section 36(1)(iii) of the Act, especially when the principal transaction itself is not proved to be genuine, cannot be allowed as expenditure. Reliance was placed on the findings of the Ld. CIT(A) who, after admitting additional evidence and calling for a remand report, recorded a categorical conclusion that the assessee failed to establish the creditworthiness of the lenders and the genuineness of the transactions, and accordingly upheld the interest disallowance in both years.

6. We have carefully considered the rival submissions, perused the assessment orders, the orders of the Ld. CIT(A), the materials placed before us, and the relevant judicial precedents cited. The core issue arising in both appeals pertains to the allowability of interest expenditure claimed by the assessee on certain unsecured loans which were either treated as unexplained cash credits by the Assessing Officer or, though not added under section 68 due to their nature as opening balances, were nevertheless disallowed for interest deductibility under section 36(1)(iii) of the Act. While the Ld. CIT(A)

deleted the addition of principal amounts under section 68 for the reason that the loans did not pertain to the year under consideration, the interest claimed on such loans was disallowed and the disallowance was confirmed in both assessment years on the ground that the assessee failed to substantiate the genuineness and creditworthiness of the loan transactions.

6.1. It is settled law that the deletion of an addition under section 68 of the Act on technical grounds—namely, that the credit pertains to an earlier year and is carried forward as opening balance—does not automatically confer legitimacy upon the transaction. It is important to note that the Ld. CIT(A) has specifically recorded that the loan amounts reflected in the opening balances pertain to earlier years which were not subject to scrutiny assessment, and therefore the principle of *res judicata* is inapplicable. The non-examination of those credits in the past does not *ipso facto* prove their genuineness in the present year.

6.2. The allowability of interest under section 36(1)(iii) of the Act is a fresh claim each year and is contingent upon the existence of a genuine and subsisting liability. In the present case, the assessee has not brought on record any credible documentary evidence to substantiate the identity and creditworthiness of the parties or the genuineness of the loan transactions.

In fact, during the course of the hearing before us, the Bench specifically asked the Ld. Authorized Representative whether any material has been placed on record to show that the loans in question, on which interest has been claimed, have been repaid in subsequent years, or that interest thereon has actually been paid. In response, the Ld. AR fairly admitted that such details had not been brought on record and further submitted that he does

not consider such evidence relevant to his contention that interest should be allowed solely because no addition under section 68 of the Act has been made in the year under consideration. In our considered view, this argument is misconceived and contrary to the settled legal position.

6.3. The deduction of interest expenditure is governed by section 36(1)(iii) of the Act, which allows deduction only where the capital has been genuinely borrowed and used for the purposes of business. If the assessee fails to establish the genuineness of the underlying loan, the interest payable or paid thereon cannot be allowed. Mere routing of interest through banking channels or deducting TDS is not conclusive proof of allowability.

6.4. Further, the assessee's failure to bring on record evidence of repayment of the loans, even years after their receipt, reinforces the Revenue's contention that the alleged loans lack commercial substance. A genuine business liability is typically reflected in either repayment schedules, confirmations, or servicing of debt – none of which have been demonstrated in the present case. The assessee has relied on various decisions to argue that non-compliance with notices under section 133(6) or 131 of the Act by third parties should not automatically lead to adverse inferences, particularly when other documentary evidence exists on record. We have perused the said decisions and find them to be factually distinguishable from the case at hand. In those cases, there existed tangible and corroborative evidence in the form of confirmations, repayment details, PANs, TDS deduction, business necessity, and historical assessments, which are conspicuously absent in the present case. Here, the assessee not only failed to discharge the initial onus but also failed to bring on record any evidence of repayment or genuine subsistence

of the loan liability, thereby justifying the disallowance of interest by the lower authorities.

6.5. Thus, the reasoning adopted by the Ld. CIT(A) in both years – namely, that the assessee failed to discharge its burden to prove the genuineness and creditworthiness of the lenders, and that interest cannot be allowed on an unverified or fictitious liability – is sound and supported by settled judicial principles. We find no justification to interfere with the findings so recorded. In view of the foregoing discussion and on a comprehensive consideration of the facts and applicable law, we are of the view that the disallowance of interest amounting to Rs.36,69,000/- in A.Y. 2017-18 and Rs.38,94,295/- in A.Y. 2018-19 is legally sustainable. Accordingly, grounds of appeals of the assessee are dismissed.

7. In the result, both the appeals of the assessee are dismissed.

Order pronounced in the Open Court on 28th April, 2025 at Ahmedabad.

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

अहमदाबाद / Ahmedabad, दिनांक / Dated 28 / 04 / 2025

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)- (NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR, ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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