

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad SMC Bench, Hyderabad
(Through Video Conferencing)
Before Smt. P. Madhavi Devi, Judicial Member

ITA No.1754/Hyd/2019		
Assessment Year: 2016-17		
Shri Vinay Kumar Dhanpal Nizamabad PAN:ASIPD1411C (Appellant)	Vs.	Income Tax Officer Ward-1 Nizamabad (Respondent)
Assessee by: Sri M.V. Anil Kumar		
Revenue by: Sri Sitarama Rao, DR		
Date of hearing:	07/01/2021	
Date of pronouncement:	08/01/2021	

ORDER

This is assessee's appeal for the A.Y 2016-17 against the order of the CIT (A)-5, Hyderabad, dated 18.09.2019.

2. Brief facts of the case are that the assessee individual, deriving income from house property and other sources, filed his return of income for the A.Y 2016-17 on 29.3.2017 admitting total income of Rs.2,54,740/-. The return was selected for limited scrutiny through CASS citing the following:

Reason Description: Negative income from partnership firm resulting in reduction of the taxable income (Schedule BP of ITR)

Issue: Whether loss from partnership firm is admissible".

3. The assessee was required to furnish certain specific information and the assessee furnished the same. On verification of such information, the AO observed that the assessee has claimed to have taken a loan to purchase open land in the year

2004-05 and he was regularly paying interest on loan and during the year of account, the interest accrued was Rs.10,85,360/- which was claimed u/s 36(1) of the I.T. Act. The assessee has also claimed that he was not given interest as he was over due to firm and interest was charged from him. Hence his claim should be allowed. Thereafter, the assessee had taken various contentions and the AO finding that the assessee is taking different contentions, did not allow the accrued interest from the assessee while computing his taxable income and accordingly brought the interest to tax. Aggrieved, the assessee preferred an appeal before the CIT (A) but did not appear before him and therefore, the CIT (A) passed an ex-parte order confirming the additions made by the AO. Aggrieved, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

"1. The learned CIT (A) erred in law and facts of the case in not giving another opportunity of hearing without ignoring the fact that the A.R would be busy with filing of returns in September.

2. Your appellant submits that the CIT (A) as well as the AO erred in law and facts of the case in not allowing the business loss of Rs.10,85,360/- being interest paid on overdrawn capital balance to firm in which your Appellant is a partner.

3. Your appellant submits that the CIT (A) as well as the AO erred in not allowing the loss from business being the interest paid to the firm on overdrawn capital balance in the firm as per section 28(v) of the I.T. Act. 1961.

4. Without prejudice to the above, alternatively your Appellant submits that the amount overdrawn from the capital account in firm, in the earlier years was utilized for the acquisition of the house property in the year 2010-11, hence the interest paid is allowable as deduction under income from house property.

5. The assessee claimed deduction on interest of Rs.10,85,360 charged on housing loan of Rs.90,44,662/- which was utilized for purchase of house No.5-7-93 Khaleelwadi, Nizamabad, he ha submitted Supreme Court ruling and Allahabad High

Court judgment in 20 ITR 330 page, the addition may be deleted.

6. For these and such other grounds that may be urged at the time of hearing your appellant prays that the Hon'ble Members may direct deletion of the addition”.

4. The learned Counsel for the assessee submitted that since the order of the CIT (A) is ex-parte the assessee, he may be given an opportunity to explain his case and therefore, prayed a remand of the issue to the CIT (A) or the AO.

5. The learned DR was also heard who opposed the remand.

6. Having regard to the rival contentions and the material on record, I find that inspite of several notices given, the assessee did not appear before the CIT (A) and submit any information before him. However, in the interest of justice, I deem it fit and proper to direct the assessee to pay a sum of Rs.1000/- to the PM Care Fund subject to which the issue is remanded to the file of the AO for denovo consideration in accordance with law. The assessee shall pay the sum within a period of one month from the date of receipt of this order and on furnishing proof of such payment, the AO shall reconsider the issue on merits.

7. In the result, assessee's appeal is treated as allowed for statistical purposes.

Order pronounced in the Open Court on 8th January, 2021.

Sd/-

<p>(P. MADHAVI DEVI) JUDICIAL MEMBER</p>

Hyderabad, dated 8th January, 2021.

Vinodan/sps

Copy to:

- 1 Shri Vinay Kumar Dhanpal C/o M.Anandam & Co. C.A, Flat
No.7A Surya Towers, SP Road, Hyderabad Telangana
- 2 ITO Ward-1 Office of Income Tax, Nizamabad
- 3 CIT (A)-5 Hyderabad
- 4 Pr. CIT – 5 Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order