IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

INCOME TAX APPEAL NO. 99 OF 2014

Niki Agro Products Pvt. Ltd.,
Jalgaon .. Appellant

Versus

ACIT, Range - 2, Jalgaon .. Respondent

Shri Subodh P. Shah, Advocates for the Appellant.
Shri Alok Sharma, Standing Counsel for the Respondent.

CORAM : S. V. GANGAPURWALA AND
A. M. DHAVALE, JJ.

CLOSED FOR ORDERS ON : 13.02.2018

ORDER PRONOUNCED ON : 23.03.2018

ORDER (*Per S. V. Gangapurwala, J.*) :-

. The appeal pertains to assessment year 2008-2009. The assessing officer has made addition of Rs. 3,61,500/-. The said addition is confirmed by the Commissioner Appeals and the Income Tax Appellate Tribunal. The addition was in respect of treating Rs. 3,61,500/- as unexplained expenditure U/Sec. 69 of the Income Tax Act (for short "I. T. Act"). The amount of Rs. 3,61,500/- was found in the accounts of one Mr. Satishchand G. Mittal. He has shown it as his income received from the assessee.

2. Mr. Shah, the learned counsel for the appellant submits that, the amount of Rs. 3,61,500/- is shown as interest receivable by Mr. S. G. Mittal. The amount is not actually paid. According to the learned advocate, show cause notice was issued on 29.11.2010, which states that, the amount of Rs. 3,61,500/- is shown as receivable from Niki Agro i. e. the assessee. The assessing officer considered this as amount payable to Shri S. G. Mittal and, therefore, added the income. The Commissioner Appeals inferred that, an amount of Rs. 3,61,500/- was in fact paid. However, it was never case of department that the amount of interest was actually paid. The Tribunal observed that, the amount of interest was offered by S. G. Mittal as interest accrued. According to the learned advocate, in the show cause notice, the interest income of S. G. Mittal was stated to be only receivable and in assessment order also interest is considered only interest payable by the appellant company. According to the learned advocate unless and until the amount is actually paid, the same would not be brought within the purview of unexplained expenditure. The learned advocate for the appellant relies on the judgment of the Delhi High Court in a case of **Commissioner of Income Tax Vs. Lubtec India Ltd.** reported in ***(2009) 311 ITR 175***.

3. Mr. Sharma, the learned advocate for the respondent submits that, all the authorities have consistently held that, the

amount of interest is paid by the assessee to Shri S. G. Mittal.

4. We have considered the submissions canvassed by the learned counsel for respective parties.

5. We have gone through the judgment delivered by the authorities and the assessment order. The Commissioner Appeals in its judgment has observed thus :

> "As regards appellant's contention that AO was not justified in treating Rs. 3,61,500/- as its unexplained expenditure u/s 69 as it did not pay the amount, I find that all circumstantial evidences contradict the appellant's submission in regard to payment of interest. The undisputed facts of the case are (i) the company received Rs. 50 lac in cash as loan on interest (ii) the said loan was repaid on 7/11/2007 as per the letter dt. 27/11/2007 written by Shri Satishchand to Shri Kantilal Jain (iii) interest was due as on 27/11/2007 and (iv) Shri Satishchand offered interest of Rs. 3,61,500/- for taxation in his return of income for AY 2008-2009. Since Shri Satishchand has shown this interest of Rs. 3,61,500/- as his income, it could be safely concluded that the company had in fact paid this amount to Shri Satishchand during AY 2008-09 outside its regular books of accounts. The loan as mentioned above was on interest. There was no question of recovery of any paper relating to receipt of interest from the premises of Shri Satishchand as the search took place on 22/11/2007

> and the interest was not paid till 27/11/2007. AO under the facts and circumstances of the case was justified in treating the said expenditure of Rs. 3,61,500/- as appellant's unexplained expenditure. The addition is confirmed and appellant's ground in this regard is dismissed."

6. Considering aforesaid observations, it is clear that, Mr. S. G. Mittal had shown the income of Rs. 3,61,500/- as his income by way of interest received from the appellant and as such authorities have safely concluded that the company had in fact paid this amount to Shri S. G. Mittal during assessment year 2008-2009 out side its books of account. It tantamounts to unexplained expenditure. The theory that interest was not paid, cannot be accepted. Considering aforesaid observations and concurrent findings, no substantial question of law arises. Appeal as such is dismissed no costs.

[A. M. DHAVALE, J.] **[S. V. GANGAPURWALA, J.]**

bsb/March 18