

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "A", MUMBAI**

**BEFORE SHRI G.S.PANNU (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 6539 & 6540/MUM/2013  
Assessment Year: 2009-10 & 2010-11**

The ACIT- 16(2), 2 <sup>nd</sup> Floor, Matru Mandir, Tardeo Road, Mumbai- 400 007.	<b>Vs.</b>	Ankit Arunbhai Shah Flat No. 92, 9 <sup>th</sup> Floor, Urvashi, 66L, Jagmohandas Marg, Nepeansea Road, Mumbai- 400 026.  PAN:- AAKPS3102P
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by : Shri. S.R.Singh  
Respondent by : Shri. Rahul R. Sarada

Date of Hearing: 06/05/2016  
Date of Pronouncement: 05/08/2016

**ORDER**

**PER RAM LAL NEGI, JM**

These two appeals have been preferred by the revenue against a common order passed by the Ld. CIT(Appeals)-27, Mumbai, dated 14/08/2013 for the Asst. years 2009-10 & 2010-11. Since both the appeals pertain to the same assessee for two assessment years, the same were clubbed and heard together and are being disposed of by this common order for the sake of convenience.

**ITA No. 6539/Mum/2013 A.Y. 2009-10**

2. Since the issues involved in both the cases are common, we take brief facts of the case pertaining to the assessment year 2009-10. The appellant an

individual and also a partner in partnership firms M/s. Aryan, M/s. Ankit Gems and M/s. Avani Gems, filed its return of income for the assessment year under consideration on 29/09/2010 declaring the total income of Rs. 39,92,870/-. Assessment u/s 143(3) was completed on 05/02/2013 and the AO determined the total income of the assessee at Rs. 61,11,150/- after making addition of Rs. 21,18,279/ towards interest paid for earning exempt income.

3. The assessee challenged the assessment order before the CIT(A). The Ld. CIT(A) after hearing the assessee allowed the appeal of the assessee holding as under:-

*“As the facts of the impugned assessment order are in pari material with those of the case of Arunhhai C. Shah, another partner, for the assessment year 2009-10 (supra), and respectfully following the decision of Hon’ble Bench of Mumbai ITAT in the case of Novel Enterprises (supra) and that of my learned predecessor, Ground No 1&2 are to be allowed in favour of the assessee”*

4. The revenue has challenged the impugned order passed by the Ld.CIT(A) on the following effective grounds:-

*“1. On the facts & circumstances of the case and in law, the Ld. CIT(A) erred in allowing interest paid to the extent of Rs. 21,18,279/- against interest earning of Rs. 1,68,85,213/- from Partnership Firm where assessee is a partner and the assessee has borrowed funds only with a motive to provide additional capital to partnership fund thereby maximizing his tax free profit from the firm.*

*2. On the facts & circumstances of the case and in law, the Ld. CIT(A) erred in deleting disallowance u/s 14A without appreciating the fact that applicability of sec. u/s 14A is upon the incidence of tax free income in the hands of the assessee, as in this case of tax free profit from partnership firm.”*

5. Before us the Ld. Counsel for the assessee submitted that the assessee's case is covered by the decision dated 01.5.2015 of ITAT, Mumbai in assessee's father case, *ITA No. 5999/Mum/2013, ACIT vs. Shri. Arunbhai Chimanlal Shah, for the A.Y. 2010-11*, in which the Tribunal has decided the identical issue in favour of the assessee.

6. On the other hand the learned departmental representative heavily relying upon the findings of the Assessing Officer submitted the Ld. CIT(A) has passed the impugned order without proper appreciation of law in the light of the facts of the present case.

7. We have heard the rival submissions and also gone through the material placed before us. The issues involved in this case are identical to the case *ACIT vs. Shri. Arunbhai Chimanlal Shah* aforesaid and the coordinate Bench of ITAT has decided the same holding as under:-

*“6. We have heard the rival submissions and also perused the impugned orders of the A.O as well as CIT(A). From the perusal of the assessment order, it is seen that the borrowed funds have not been utilized for the fixed capital of the partnership firm, but, was given to current account of the firm. The assessee has paid interest of Rs. 38,08,353/- on the funds borrowed and has earned interest income of Rs. 1,03,49,056/- on the partners current account*

*balance, from the firm. Hence, there is a direct nexus between the borrowings and money given to the firm's current account and earning of interest income. This fact has been noted by the AO at page 2 in para 4.2 of the assessment order. Once the amount borrowed is not towards capital contribution then, it cannot be held that any disallowance u/s 14A can be made on the ground that share profit from the firm is exempt in the hands of the assessee. In the account of the firm there is a separate fixed capital account and current capital account. The assessee's share in the partnership firm was 22% and capital standing to his credit as on 31.03.2010 was Rs. 6,66,00,000/- in the fixed capital and Rs. 19,00,34,158/- in the current account. The interest which has been received by the assessee is on current capital account against which the assessee has claimed deduction of the interest paid. Here in this case it needs to be examined, whether or not the borrowed funds which has been given to the current capital account and interest earned thereon has been offered as taxable income or not. If that is so, then no disallowance u/s 14A can be made. Accordingly, for limited purpose, matter is restored to the file of the A.O for verification after giving opportunity to the assessee."*

8. We notice that the co-ordinate Bench while deciding the identical issue in favour of the assessee, restored the matter to the file of the A.O for a limited purpose of verification as to whether the borrowed funds which have been given to the current capital account and interest earned thereon has been offered as taxable income or not. However, in the present case, we find that the assessee has offered to tax an amount of Rs. 4828502/- as interest income earned during the A.Y. under consideration from the partnership firm. Hence,

in the present case there is no need to restore back the issue to the file of the A.O. for verification.

9. Hence, in our considered opinion the impugned order passed by the Ld. CIT(A) is in accordance with the decision of the co-ordinate Bench rendered in assessee's father case aforesaid. In view of the facts that the Co-ordinate bench has decided the identical issue in favour of the assessee, we, uphold the impugned order passed by the Ld. CIT(A) and dismiss the appeal of the revenue.

**ITA No. 6540/Mum/2013 A.Y. 2010-11**

The revenue has challenged the impugned order for the assessment year on the following effective grounds:-

*1. On the facts & circumstances of the case and in law, the Ld. CIT(A) erred in allowing interest paid to the extent of Rs. 6,04,445/- against interest earning of Rs. 32,42,404/- from Partnership Firm where assessee is a partner and the assessee has borrowed funds only with a motive to provide additional capital to partnership fund thereby maximizing his tax free profit from the firm.*

*2. On the facts & circumstances of the case and in law, the Ld. CIT(A) erred in deleting disallowance u/s 14A without appreciating the fact that applicability of sec. u/s 14A is upon the incidence of tax free income in the hands of the assessee, as in this case of tax free profit from partnership firm.*

2. Since, the facts of the present appeal (except the amount involved) and issues involved are identical to the appeal of the assessee for the assessment

year 2009-10 and since we have decided the identical grounds of appeal in favour of the assessee in assessee's own case for the assessment year 2009-10 aforesaid, we allow this appeal of the assessee on the same reasoning. Accordingly the finding of the Ld. CIT(A) are upheld and the appeal filed by the revenue is dismissed.

3. In the result, both the appeals filed by the revenue for the A.Y's 2009-10 & 2010-11 are dismissed.

Order pronounced in the open court 5<sup>th</sup> August, 2016.

Sd/- (G.S.PANNU) ACCOUNTANT MEMBER	Sd/- (RAM LAL NEGI) JUDICIAL MEMBER
मुंबई Mumbai; दिनांक Dated: 05/08/2016	

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

*Pramila*