

**IN THE INCOME TAX APPELLATE TRIBUNAL
Delhi Bench "E", New Delhi**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
AND**

BEFORE K.N. CHARY, JUDICIAL MEMBER

I.T.A. No. 1776/Del/2016

Assessment Year: 2011-12

ACIT Circle-34(1), Room No. 804, 8 th Floor, E-2 Block, S.P. Mukharjee Bhawan, New Delhi	Vs.	Suman Jain C-5, Ashok Vihar, Phase-I Delhi PAN-AAGPJ3316C
[Appellant]		[Respondent]

Department by:	Sh. S.P. Gupta, Sr. DR
Respondent by:	Sh. Anil Kumar Chadha, C.A.

Date of Hearing:	14	09	2017
Date of Pronouncement:	24	10	2017

ORDER

PER N.K. SAINI, A.M:

This appeal is filed by the Department against the order dated 28.1.2016 of CIT(A)-12, New Delhi. Following grounds have been raised in this appeal:-

- i. *Whether on the facts and in the circumstances of the case, the Ld. CIT(Appeals) has erred in deleting the addition of Rs. 55,99,080/- made by the Assessing Officer on interest charged on borrowed funds introduced in the capital of the proprietorship concern of Rs. 5,54,29,247/- violating the provisions of Income Tax Act, 1961 as nowhere interest on capital is allowed as a deduction in the accounts of the proprietorship concern.*

- ii. *Whether the Ld. CIT(A) on the facts and circumstances of the case has erred in deleting the addition of Rs. 55,99,080/- made by the assessing officer on interest charged on borrowed funds in personal capacity in the Profit and Loss account of the Proprietary concern of the assessee.*

2. From the above grounds, it is gathered that only grievance of the Department relates to the deletion of addition of Rs. 55,99,080/- made by the AO on account of interest charged on borrowed funds in personal capacity.

3. Facts of the case, in brief, are that the assessee filed the return of income on 28.11.2011 declaring an income of Rs. 14,98,840/-. Subsequently, the case was selected for scrutiny. The AO made an addition of Rs. 55,99,080/- by making the disallowance of interest paid on loan in personal capacity and accordingly the income was assessed at Rs. 70,97,920/-. Being aggrieved, the assessee carried the matter to the learned CIT(A) and submitted as under:-

“The Ld. A.O. had accepted the fact that the personal borrowings on which interest of Rs. 55,99,080/- were utilized by M/s Sandeep Enterprises and it is only when the said the personal borrowings were used by M/s Sandeep Enterprises the appellant could earn profit of Rs. 72,42,312 from M/s Sandeep Enterprises in AY 2011-12 and there was no cogent reason at all for making disallowance of the interest of the Rs. 55,99,080/- claimed in the returns of the income in A Y 2011-12.

Ld. A.O. has ignored all the aforesaid material facts in the assessment order and grossly erred on facts and in law in treating the appellant and proprietorship firm of the appellant firm M/s Sandeep Enterprises as two different distinct legal entities and did not allow deduction of interest paid on personal borrowings when, on the contrary, the appellant had established before Ld. AO that the personal borrowings made in personal capacity were utilised for earning profit from M/s. Sandeep Enterprises and thereby being a direct nexus and interest cost incurred on the said personal borrowings were integral part of the earning profit from carrying on business in the name of proprietorship firm M/s Sandeep Enterprises and therefore the interest of Rs. 55,99,080/- was deductible u/s 36(l)(iii) of Income Tax Act from the profit of Rs. 72,42,312/- earned from carrying on business by M/s. Sandeep Enterprises in A Y 2011-12.

As per provisions of the Income Tax Act, 1961 the income or expenditures relating to business income either earned or expended in

personal name or in the name of firm are both to be clubbed, computed and assessed in the hands of same assessee and the appellant or proprietorship firm of the appellant are not at all to different distinct legal entities unlike partner and partnership firm which both are two separate legal entities assessed under the provisions of Income Tax Act, 1961.”

“Hon’ble Supreme Court in the case of India Cement Ltd. vs. CIT 60 ITR 52 (SC) has held that:

“The act of borrowing money was incidental to the carrying on of business, the loan obtained was not an asset or an advantage of enduring nature, the expenditure was made for securing the use of money for a certain period and it was irrelevant to consider the object with which the loan was obtained. Where there is no express prohibition, an outgoing, by means of which an assessee procures the use of a thing by which he makes a profit, is deductible from the receipts of the business to ascertain the taxable income.”

13. Hon’ble Supreme Court in the case of Bharat Sanchar Nigam Limited vs. CIT 282 ITR 273 (SC) has held that:

“Where the facts and law in a subsequent assessment year are the same, no authority whether quasi-judicial or judicial can generally be permitted to take a different view.

14. In view aforesaid it is submitted that the net inflow income by carrying on business was only Rs. 16,43,232/- in AY 2011-12 which was assessable under the head the income from business (i.e. profit of Rs. 72,42,312/- earned from M/s Sandeep Enterprises minus interest cost of Rs. 55,99,080/- incurred on personal borrowings introduced through capital of appellant in M/s Sandeep Enterprises.

4. The learned CIT(A) after considering the submissions of the assessee deleted the addition made by the AO by observing in para 8.5 & 8.6 of the impugned order as under:-

“8.5 I have considered the observation of the Assessing Officer and submissions of the Appellant. It is seen that Appellant is proprietor of M/s Sandeep Enterprises. She has taken loan in her personal capacity and there is loan of Rs.5,54,29,497/- as on 31.03.2011, it is seen that amount of loan has been introduced as capital in Appellant’s proprietary business M/s Sandeep Enterprises and the interest of Rs.55,99,080/- on the total loan amounting to Rs.5,54,29,497/- introduced as capital has been debited from the amount of profit she has received from M/s Sandeep Enterprises.

8.6 It is seen that Appellant has taken loans in her personal capacity and the amount of loan has been introduced in the capital

account of Appellant in her proprietary concern M/s Sandeep Enterprises and it has been utilized by Appellant in M/s Sandeep Enterprises for purpose of her business and, therefore, there is a direct nexus of these amounts with Appellant's business as these have been used for purposes of business of M/s Sandeep Enterprises of which she is the proprietor. Hence, there is no dispute that loans taken by Appellant has been used for business purpose of M/s Sandeep Enterprises. The interest payment cannot be denied merely on the basis that interest was paid by Smt. Suman Jain than by M/s Sandeep Enterprises of which she is the proprietor. Appellant has been following this practice during last previous years which has been allowed by the Department. Ld. CIT(A) for A.Y. 2009-10 vide his order dated 24.12.2012 has allowed Appellant's appeal. Therefore, in view of the facts and circumstances of the case and submissions of the Appellant, ground no. 2 & 3 of Appellant are allowed."

5. Now the Department is in appeal.

6. The learned DR supported the order of the AO and reiterated the observations made in the assessment order dated 28.03.2014. In his rival submissions, the learned counsel for the assessee submitted that an identical issue having similar facts has been decided in favour of the assessee by the ITAT Delhi Bench "G", New Delhi in ITA No. 3008/Del/2013 for the Assessment Year 2009-10 in assessee's own case. Copy of the said order was furnished which is placed on record.

7. We have considered the submissions of both the parties and carefully gone through the material available on the record. It is noticed that an identical issue having similar facts has been decided in favour of the assessee by the ITAT Delhi Bench "G", New Delhi and the relevant findings are given in para 15 to 18 of the order dated 30th March, 2016 in ITA No. 3008/Del/2013 for the A.Y. 2009-10 in assessee's own case wherein the relevant findings are given in para 15 to 18 which reads as under:-

"15. Assessee by way of additional evidence before the Tribunal allowed vide order of the even date, brought on record the sanction letter dated

14.01.2016 whereby bank limit of Rs. 5.5 Crores was sanctioned at lower bank interest rate lying at page 1 to 17 of the additional evidence.

16. Hon'ble Apex Court has decided the identical issue in the judgment cited as *Indian Cements Ltd. vs. 60 ITR 52 (SC)* wherein it has been held that when the act of borrowing money was incidental to carrying on the business, the loan obtained was not an asset or an advantage of enduring nature, the expenditure was made for securing the use of money for a certain period and it was irrelevant to consider the object with which the loan was taken.

17. In the instant case, when from the document produced before the AO, CIT (A) as well as in the additional evidence before the Tribunal by the assessee, it is proved that the loan amount borrowed by the assessee in individual capacity was utilized for earning profit from M/s. Sandip Enterprises, a proprietorship concern of the assessee, a direct link has been established and as such, the interest cost incurred on the said personal borrowing was integral part of the earning profit in the said business. .

18. Moreover, when assessee has proved that borrowings taken in individual capacity was on lower bank interest of 0.25% BPLR as against regular rate of 1.75% BPLR it has certainly enhanced the profit of M/s. Sandip Enterprises also and in such circumstances, the interest amount of Rs.35,43,206/- has been rightly allowed to be deducted by the CIT(A). So we find no illegality and infirmity in the finding returned by the CIT(A) and consequently, grounds no. 2 & 3 are also determined against the revenue.”

8. So respectfully following the aforesaid referred to order dated 30th March, 2016 in assessee's own case in ITA No. 3008/Del/2013 for the A.Y. 2009-10. We do not see any merit in this appeal of the Department.

9. In the result, the appeal of the Department is dismissed.

(Pronounced in the open court on 24.10.2017.)

Sd/-
[K.N. CHARY]
Judicial Member

Sd/-
[N.K. SAINI]
Accountant Member

DATED: 24.10.2017

SH

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Assistant Registrar